



Brussels, 04.09.2007
D(2007) 9724

Mr Bill MANSFIELD
Chair
South Pacific Regional Fisheries Management
Organisation
New Zealand

Subject: 4th Meeting for the establishment of a new South Pacific RFMO – EC comments on Chair's text of 26 July 2007

Dear Mr Mansfield,

Thank you for your letter of 26 July 2007 enclosing the second revision of your text, which we have studied with much interest. We have noted that several amendments proposed by the EC in its Draft Convention text of 4 May 2007 have been included in your latest draft.

In this regard, I would like to ask you to instruct the meeting Secretariat to make our Draft Convention text available in hard copy for the participants, as some of them informed us they had problems in finding it on the meeting website. I attach the document for ease of reference.

In relation to your new Draft, we consider that a number of key issues require further reflection by Participants, and these refer notably to the following issues:

Decision making

We remain of the view, already expressed in my letter of 17 April this year, that the current draft text is unduly complicated.

The Conference should in our view explore other processes for decision making which at the end of the day are more likely to be acceptable to all Parties. Other options worth exploring in this regard are, firstly, decision making by consensus (as provided for in the SIOFA Agreement or the Antigua Convention of the IATTC), secondly, by majority voting coupled with a well defined procedure for Parties to object the measures (as provided for in the NEAFC, NAFO or SEAFO Conventions) or, thirdly, by a mixture of consensus as the objective, with a fall back to majority vote and objection procedure.

Structure of the Organisation

We remain of the view that we should not complicate the management structure of this organisation which is going to be dealing with only a handful of stocks. We consider that the creation of two subcommittees would only complicate the work of the organisation and we find no rationale in the text which will justify this structure. Rather, we see considerable complications with its implementation and actual functioning which will be to the detriment of the organisation.

Balance of interests between Parties

On this issue, the language used in the text seems to give preference to Coastal States on the issue of “compatibility of measures”. With the wide range on interests around the table, it is excluded that any approach on compatibility that would give precedence to either High Seas measures or Coastal State measures, will be acceptable. The text must therefore provide for strict neutrality between these interests in order to meet the approval of all Parties.

This question also raises the issue as to whether the Area of Application should be limited to the high seas or whether it should include also the EEZs. The duty to co-operate for the creation of new RFMOs in the UN Fish Stocks Agreement applies not only to high seas stocks but also to straddling stocks. Therefore, the area of application in other RFMOs include also the EEZs of the Coastal States, although the management powers of the RFMO Commission for non tuna resources are limited to areas of the high seas.

Convention/Agreement and Secondary legislation

We believe it is important to ensure a good framework in the new Convention/Agreement which allows for an efficient and flexible RFMO. Therefore, we believe that we should not include detailed provisions in relation to conservation and management measures in the Convention (your suggested Articles 17-21). These types of provisions must have sufficient flexibility to adapt to changing situations. Their inclusion in a text which would require ratification by all Parties if later modifications were necessary, makes it an inflexible instrument. Conservation and management measures are best addressed through the adoption of annual or multi annual measures, as in other RFMOs.

Dispute settlement provisions

We believe that that the provisions in the current text are insufficient. In particular, we believe that mechanism for 'in house resolution' of disputes though the creation of an ad hoc panel should be provided for in order to better cater for the different situations that might occur.

Amendment, ratification accessions etc

We believe that these provisions will require some further consideration in order to ensure consistency in the approach taken. We do for example not believe it is logic that amendments to the Convention should require the ratification by all States before entering into force, when the entry into force of the Convention itself only would require the ratification of six Parties.

Finally, we agree with you that the Conference as soon as possible should move into a more focused and intensive working mode. Therefore we share and support your suggestion to convene a smaller working group to begin working on specific issues.

We look forward working with you and other delegations at the up-coming meeting in Noumea.

I would be grateful if this correspondence is circulated to other participants as soon as possible.

Yours sincerely,

"signed"
John SPENCER
Head of EC Delegation to RFMOs

Annex: EC Draft Convention text of 4 May 2007

EC Amendments to Chair's Text – 04 May 2007

Convention on the Conservation and Management of Fishery Resources in the South Pacific Ocean

Introduction:

The Contracting Parties,

Committed to ensuring long-term conservation and sustainable use of fishery 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 sub-regional 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 established exclusive economic zones within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fishery 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, in relation to the conservation, management and sustainable development of fishery resources ;

Noting the need for regional fisheries management organisations and arrangements to undertake performance reviews, in order to assess the degree to which they are attaining their respective conservation and management objectives;

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 in which they occur;

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

MINDFUL that effective conservation and management measures should be based on the best scientific advice and the application of precautionary approach and the ecosystem approach ;

Convinced that the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and the safeguarding of the marine ecosystems in which those resources occur may best be achieved by the conclusion of an international Convention for that purpose;

Have agreed as follows:

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Article 1: DEFINITIONS

- (a) '1982 Convention' means the United Nations Convention on the Law of the Sea of 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) "Contracting Party" means any State or regional economic integration organisation which has consented to be bound by this Convention, and for which the Convention is in force;
- (d) "Fishing entity" means any fishing entity referred to in article 1 paragraph 3 of the 1995 Agreement.
- (e) 'Area' means the area to which this Agreement applies in accordance with article 4;
- (f) '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;
- (g) '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) in so far as they are managed by other international Conventions or Agreements, anadromous and catadromous stocks as well as highly migratory species listed in Annex I of the 1982 Convention;
 - (iii) highly migratory species listed in Annex 1 of the 1982 Convention, excluding sauries;
- (h) "Fishing activities" means harvesting fishery resources, processing operations of fishery resources, the transshipment of fishery resources or fishery resource products, and any other activity in preparation for or related to the harvesting of fishery resources, including:
 - (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) any operation at sea in support of, or in preparation for, any activity described in this definition, including transshipment;
 - (iv) 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;
- (i) "Fishing vessel" means any vessel which is or has been engaged in fishing activities, including fish processing vessels and vessels engaged in transshipment or any other activity in preparation for or related to fishing activities, including experimental or exploratory fishing activities;
- (j) 'flag State' means, unless otherwise indicated:
 - (i) a State whose vessels are entitled to fly its flag; or
 - (ii) a regional economic integration organisation in which vessels are entitled to fly the flag of a member State of that regional economic integration organisation;
- (k) 'IUU fishing' means activities as defined in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing, and other activities as may be decided by the Commission;
- (l) "Marine biological diversity" means the variability among living marine organisms and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;
- (m) "Living marine resources" means all living components of the marine ecosystems, including seabirds;
- (n) "Nationals" include both natural and legal persons;
- (o) 'market State' means a State which imports, exports, re-exports or has a domestic market for fish products derived from fishing in the Area;

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- (p) 'port State' means any State receiving fishing vessels in their ports including port offshore terminals and other installations for, *inter alia*, landing, transhipping, refuelling or re-supplying;
- (q) '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;
- (r) 'transhipment' means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

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Article 2: OBJECTIVE

The objective of this Convention is, to ensure the long-term conservation and sustainable use of fishery resources in the Convention Area and in so doing, safeguard the marine ecosystems in which these resources are found.

Article 3: CONSERVATION AND MANAGEMENT PRINCIPLES

1. In giving effect to the objective of this Agreement and carrying out decision making under the Agreement, the Contracting Parties shall apply in particular the following principles:

- (a) promote the optimum utilization and long-term sustainability of fisheries resources;
- (b) base measures on the best scientific advice available and adopt measures to ensure that fishery resources are maintained at levels capable of producing maximum sustainable yield, and rebuild fishery resources to the said levels;
- (c) apply the precautionary approach in accordance with Article 6 of the 1995 Agreement;
- (d) take due account of the impact of fishing activities on other species and marine ecosystems and in so doing, adopt measures to minimize harmful impact on fishery resources and marine ecosystems;
- (e) the interests of developing States shall be taken into account, consistent with the 1995 Agreement;
- (f) take due account of the need to preserve marine biological diversity;
- (g) prevent or eliminate overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the fishery resources;
- (h) ensure that complete and accurate data concerning the fishing activities within the area of application are collected and shared in a timely manner among the Contracting Parties.
- (i) ensure effective compliance with management measures and that sanctions for any infringements are adequate in severity; and
- (j) combat IUU fishing and exercise effective control in this regard;
- (k) pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised.

Article 4: AREA OF APPLICATION

1. This Convention applies to the Area of the South Pacific Ocean north of ..°', south of ..°', west of ..°', and east of ..°'.

[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 Agreement 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 Agreement 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 economic exclusive zones 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”]

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2. 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.

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Article 5: THE ORGANISATION

1. The Contracting Parties hereby agree to establish, maintain and strengthen the South Pacific Regional Fisheries Management Organisation “the Organisation”, which shall carry out its functions as set forth in this Agreement in order to achieve the objective of this Agreement.
2. The Organisation shall consist of:
 - (a) a Commission;
 - (b) a Scientific Committee, a Compliance Committee, a Finance and Administration Committee, as subsidiary bodies, and any other subsidiary bodies and sub-committees that the Commission may establish from time to time to assist it in its work;
 - (c) a Secretariat.
3. The Organisation shall have a legal personality and shall enjoy in its relations with other international organisations and in the territories of the contracting Parties such legal capacity as may be necessary to perform its functions and achieve the objective of this Agreement. The immunities and privileges which the Organisation and its officers shall enjoy in the territory of a Contracting Party shall be subject to an agreement between the Organisation and the Contracting Party including, in particular, a headquarters agreement between the Organisation and the host Contracting Party.
4. The Chairperson of the Commission shall be the President of the Organisation and shall be its principal representative.
5. The headquarters of the Organisation shall be.....or at such other place as may be decided by the Commission.

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Article 6: THE COMMISSION

1. Each Contracting Party shall be a member of the Commission and shall appoint one representative to the Commission who may be accompanied by alternative representatives, experts and advisers.
2. The Commission shall elect a Chairperson and a Vice-Chairperson, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than two terms in succession. The Chairperson and Vice-Chairperson shall be representatives of different Contracting Parties.
3. The first meeting of the Commission shall take place no later than 12 months following the entry into force of the

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Agreement. Thereafter the Chairperson of the Commission shall convene an Annual Meeting at a time and location to be decided by the Commission.

4. Extraordinary meetings of the Commission may be held at such time and place as the Commission decides. The Commission may also decide on a mail vote procedure for the taking and recording of decisions intersessionally.

5. The Contracting Parties, at their first meeting, shall consider the adoption of a budget to fund the Commission and its subsidiary bodies, and shall also consider the adoption of financial regulations. Decisions on the budget and financial regulations shall be taken by consensus.

Article 7: FUNCTIONS OF THE COMMISSION

1. The Commission shall, in accordance with the principles set out in article 3 of this Agreement, exercise the following functions:

- (a) adopt conservation and management measures, including the establishment of total allowable catches and/or total allowable fishing effort, to achieve the objective of this Agreement;
- (b) determine the nature and extent of participation in the different fisheries, where appropriate;
- (c) develop data collection, verification, reporting and dissemination programmes to support fishery conservation and management;
- (d) promote the conduct of scientific research in support of fishery conservation and management and, in collaboration with the Scientific Committee, establish procedures for the conduct of fishing for scientific purposes;
- (e) co-operate and exchange data with relevant organisations and coastal States and promote compatibility between conservation and management measures in the Area and adjacent areas;
- (f) develop and implement effective monitoring, control, surveillance and enforcement procedures;
- (g) 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;
- (h) prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort for fisheries, and consequent by-catch of non-target species, do not exceed those commensurate with the sustainable use of fishery resources;
- (i) develop appropriate processes in accordance with international law to assess flag States' performance with respect to implementing the obligations regarding fishing vessels flying their flag set out in this Convention, and adopt proposals if appropriate to ensure flag state performance;
- (j) develop and implement effective market-related measures;
- (k) develop, where appropriate, monitor, trade and transport flows from the catch to the market by means of catch documentation schemes;
- (l) adopt proposals for measures to monitor, combat and eliminate IUU fishing;
- (m) review the effectiveness the Organisation in meeting the objectives of this Convention;
- (n) supervise the organisational, administrative, financial and other internal affairs of the Organisation;
- (o) guide the Commission's subsidiary bodies in their work;
- (p) approve the budget of the Organisation;
- (q) adopt and amend as necessary its rules of procedure and financial regulations;
- (r) exercise any other function and take any other decisions that may be necessary for achieving the objective of this Agreement.

2. The Commission shall exercise the following functions in collaboration with the Scientific Committee:

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- a) identify conservation and management needs;
- b) keep under review the status of stocks and gather, analyse and disseminate relevant information on stocks;
- c) assess the impact of fishing, and other human activities and, where appropriate, on living marine resources and marine ecosystems;
- d) develop measures for the conduct of fishing for scientific purposes; and
- e) develop rules for the collection, submission, verification, access to and use of data.

3. The Commission may refer to the Scientific Committee any question pertaining to the scientific basis for the decisions it may need to take concerning fishery resources, the impact of fishing activities on living marine resources, and the safeguarding of the ecosystem in which these resources occur.

4. The Commission, shall, when necessary, develop procedures which allow for measures including non-discriminatory trade-related measures, to be taken, consistent with the international obligations of Contracting Parties against any flag State whose fishing vessels participate in fishing activities in a manner that undermines the effectiveness of the conservation and enforcement measures adopted by the Commission.

5. The Commission shall adopt, and amend as occasion may require, its rules of procedures, financial regulations and other regulations required for the functioning of the Commission.

6. The Commission may establish such subsidiary bodies and subcommittees as it considers desirable for the exercise of its duties and functions and guide their activities

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Article 8 – THE SCIENTIFIC COMMITTEE

1. The Scientific Committee shall meet once a year unless otherwise decided by the Commission.

2. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers.

3. The Scientific Committee may seek expert advice as required on an *ad hoc* basis.

4. The functions of the Scientific Committee shall be to provide the Commission with scientific advice and recommendations for the formulation of conservation and management measures for fishery resources covered by this Convention, and to encourage and promote cooperation in scientific research in order to improve knowledge of the fishery resources of the Convention Area.

5. In performing its functions, the Scientific Committee shall conduct such activities as the Commission may direct and shall:

- (a) consult, cooperate and encourage the collection, study and exchange of information relevant to the fishery resources of the Convention Area;
- (b) establish criteria and methods to be used in determining conservation and management measures;
- (c) assess the status and trends of relevant populations of fishery resources;
- (d) analyse data on the direct and indirect effects of fishing and other human activities on populations of fishery resources;
- (e) assess the potential effects of proposed changes in the methods or levels of fishing and of proposed conservation and management measures; and
- (f) transmit reports and recommendations to the Commission as directed, or on its own initiative, regarding conservation and management measures and research.
- (g) determine specific biological reference points above which the sustainability of a 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;

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- 6 In carrying out its functions, the Scientific Committee shall seek to take into consideration the work of other fisheries management organisations, as well as other technical and scientific bodies.
- 7 The first meeting of the Scientific Committee shall be held within three months of the first meeting of the Commission.
- 8 The Scientific Committee shall adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.
- 9 The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

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 . (a) plan, conduct and review such scientific assessments of fishery resources in the Area and the impact of fishing on the marine ecosystems in the Area as may be required by the Commission;
 . (b) encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources and the marine ecosystems in the Area;
 . (c) provide such other scientific advice to the Commission and its subsidiary bodies as may be required by the Commission.
 4. 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 9: COMPLIANCE COMMITTEE

- 1 The Compliance Committee shall meet once a year unless otherwise decided by the Commission.
- 2 Each Contracting Party shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives and advisers.
- 3 Unless otherwise decided by the Commission, the functions of the Compliance Committee shall be to provide the Commission with information, advice and recommendations on the implementation of, and compliance with, conservation and management measures.
- 4 In performing its functions, the Compliance Committee shall conduct activities as the Commission may direct and shall:
 - (a) coordinate compliance activities undertaken by or on behalf of the Organization;
 - (b) coordinate with the Scientific Committee on matters of common concern; and
 - (c) perform such other tasks as directed by the Commission.

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3. The functions of the Compliance Committee shall be to:
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- 5 The Compliance Committee shall adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.
- 6 The Compliance Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

Article 10: SECRETARIAT

- 1 The Secretariat shall perform the functions delegated to it by the Commission.
- 2 The chief administrative officer of the Secretariat shall be the Executive Secretary, who shall be appointed by the Commission according to such procedures and on such terms as it may determine.
- 3 Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such rules and procedures as may be determined by the Commission.
- 4 The Executive Secretary shall, subject to the general supervision of the Commission, have full power and authority over any employees and employee-related issues of the Secretariat and shall perform such other functions as the Commission shall prescribe.

Article 11: BUDGET

1. Each Contracting Party shall contribute to the Budget. The contribution by each Contracting Party shall be according to a combination of an equal basic fee, and a fee based on the total catch in the Convention Area of species covered by the Convention. The Commission shall adopt and amend the proportion in which these contributions are applied taking into account the economic status of each Contracting Party. For Contracting Parties with territory adjoining the Area, this shall be the economic status of that territory.

2. The Commission may request and accept financial contributions and other forms of assistance from organisations, individuals and other sources for purposes connected with the fulfilment of its functions.

3. The financial activities of the Organisation, including the proportion of contributions referred to in paragraph 1, shall be conducted in accordance with Financial Regulations adopted by the Commission and shall be subject to an annual audit by independent auditors appointed by the Commission.

The Executive Secretary shall notify each Contracting Party of the contribution due from that Party as calculated under paragraph 1, and as soon as possible thereafter each Contracting Party shall pay to the Organisation its contribution.

5. Contributions shall be payable in the currency of the country in which the headquarters of the Organisation is located, except if otherwise authorised by the Commission.

6. The Executive Secretary shall for each financial year submit a draft of the annual budget to each Contracting Party together with a schedule of contributions, not less than 60 days before the annual meeting of the Commission at which the budget is to be considered. In preparing the draft budget the Secretariat shall take full account of the need for cost effectiveness together with the guidance of the Commission as to the meetings of the subsidiary bodies that may be required in the budget year.

7. A Contracting Party acceding to this Agreement during the course of a financial year shall contribute in respect of that year a part of the contribution calculated in accordance with the provisions of this article that is proportional to the number of complete months remaining in the year.

8. A Contracting Party that is in arrears with its payment of any monies owing to the Organisation by more than two years, may not participate in the taking of any decisions of the Commission until it has paid all monies owing by it to the Commission and, may not notify non-acceptance of any measure adopted by the Commission.

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 5. . In order to minimize cost to the members of the Commission, the Secretariat to be established under this Commission shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions and more specifically the availability of services under contractual arrangement. ¶

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Article 12: DECISION-MAKING

1. As a general rule, decision-making in the Commission 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. If it is considered that all efforts to reach a decision by consensus have been exhausted, then decisions of the Commission shall, except where otherwise provided, be taken by two-thirds majority of the votes of all Contracting Parties present and casting affirmative or negative votes, provided that no vote shall be taken unless there is a quorum of at least two-thirds of the Contracting Parties. Each Contracting Party shall have one vote in the voting proceedings of the Commission

Article 13- IMPLEMENTATION OF COMMISSION DECISIONS

1. Each proposal adopted by the Commission pursuant to Article 6 shall become binding on the Contracting Parties in the following manner:

- a) The Executive Secretary shall within five working days transmit each proposal to all Contracting Parties, specifying the date of transmittal for the purposes of paragraph 2.
- b) Subject to the provisions of paragraph 2, the proposal shall become binding upon all Contracting Parties sixty days following the date of transmittal pursuant to subparagraph a) unless otherwise specified in the proposal.

2. If any Contracting Party presents to the Executive Secretary an objection to a proposal within sixty days of the date of transmittal specified in the notification of the measure by the Executive Secretary, any other Contracting Party may similarly object prior to the expiration of an additional twenty day period, or within fifteen days after the date of transmittal specified in the notification to the Contracting parties of any objection presented within that additional twenty day period, whichever shall be later. The proposal shall then become a binding measure on all Contracting Parties, except those which have presented objections, at the end of the extended period or periods for objecting. If, however, at the end of such extended period or periods, objections have been presented and maintained by a majority of Contracting Parties, the proposal shall not become a binding measure, unless any or all of the Contracting Parties nevertheless agree as among themselves to be bound by it on an agreed date.

3. Any Contracting Party which has objected to a proposal may at any time withdraw that objection and the proposal shall then become a binding measure on such a Contracting Party.

4. At any time after the expiration of one year from the date on which a measure enters into force, any Contracting Party may give to the Executive Secretary notice of its intention not to be bound by the measure, and, if that notice is not withdrawn, the measure shall cease to be binding on that Contracting Party at the end of one year from the date of receipt of the notice by the Executive Secretary. At any time after a measure has ceased to be binding on a Contracting Party under this paragraph, the measure shall cease to be binding on any other Contracting Party upon the date a notice of its intention not to be bound is received by the Executive Secretary.

5. Any Contracting Party which has presented an objection to a proposal under paragraph 2 or given notice of its intention not to be bound by a measure under paragraph 4 shall at the same time provide an explanation for its reasons for taking this action. This explanation shall specify whether the reasons for taking this action is that the Contracting Party considers that the proposal or measure is inconsistent of the provisions of this Convention, or that the proposal or measure unjustifiably discriminates in any form or fact against it. The explanation shall also include a declaration of its intentions following the objection or notice, including a description of the alternative measures it intends to take or has taken for the conservation, management and control of the relevant fishery resources in accordance with the objective of this Convention.

6. The Executive Secretary shall immediately notify each Contracting Party of:

- a) the receipt of each objection and withdrawal of objection under paragraphs 2 and 3;
- b) the date on which any proposal becomes a binding measure under the provisions of paragraph 1;
- c) the receipt of each notice under paragraph 4; and
- d) each explanation and description of alternative measures received under paragraph 5.

7. In the event that any Contracting Party invokes the procedure set out in paragraphs 2, 4 and 5, it may at the same time request that an ad hoc panel be convened in accordance with Annex II.

8. Should an ad hoc panel not be requested pursuant to paragraph 7, the commission shall decide, through a mail vote, whether to convene an ad hoc panel in accordance with Annex II.

9. Where, pursuant to paragraph 8, the Commission decides not to convene an ad hoc panel, any Contracting Party may request a meeting of the Commission to review proposal or measure of the commission and the alternative measures.

10. Any ad hoc Panel established pursuant to paragraphs 7 or 8 shall review the alternative measures and the proposal or measure of the Commission and make recommendations to the Commission on:

(a) whether the alternative measures proposed in paragraph 5 are in accordance with the objective on this Convention and preserve the rights of all contracting parties, and

(b) whether the explanation pursuant to paragraph 5 is well founded, and whether the proposal or measure of the Commission should be modified or amended, and if so, how, or maintained or revoked.

11. Thirty days following the procedures set out in paragraph 10, the Commission shall meet to consider the recommendations of the ad hoc panel.

12. Where the procedures set out in paragraphs 7 to 11 have been concluded, any Contracting Party may invoke the dispute settlement procedures set out in Article 21.

Article 14: TRANSPARENCY

1. The Contracting Parties shall promote transparency in decision-making processes and other activities carried out under this Convention.
2. The Commission shall publish its conservation and management measures when adopted and shall maintain a public record of all conservation and management measures in force in the Area.
3. The Commission 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 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 Commission 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 Commission and of its subsidiary bodies, as observers or otherwise as appropriate, in accordance with the rules of procedure adopted by the Commission. The rules of procedure shall not be unduly restrictive in this respect. Such representatives shall have timely access to relevant information, in accordance with the rules of procedure of the Commission.

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Article 15: RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

1. The Contracting Parties shall give full recognition to the special requirements of developing States Parties to this Convention, in particular the least developed among them and small island developing States, and of territories and possessions, in relation to the conservation and management of fishery resources in the Area and the sustainable development of such resources.
2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for fishery resources covered by this Convention, the Contracting Parties shall take into account the special requirements of developing States, in particular:
 - (a) the vulnerability of developing States in the region which are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or part thereof;
 - (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous people in developing States, particularly small island developing States;
 - (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States in the region.
3. The Contracting Parties shall cooperate through the Commission and other sub-regional or regional organisations involved in the management of fishery resources to:
 - (a) enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage fishery resources and to develop their own fisheries for such resources;
 - (b) assist developing States, in particular the least developed among them and small island developing States, to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Convention;

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- (a) designate annual quota allocations or effort limitations for Contracting Parties;
- (b) allocate catch quantities for exploration and scientific research; and
- (c) set aside fishing opportunities for non-parties to this Convention, if necessary.

3. The Commission shall review decisions regarding participation in fisheries, including the allocation of the total allowable catch or total allowable fishing effort, taking into account the matters listed in paragraph 1 of this article and the interests of new Contracting Parties.

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Article 18 : DEVELOPMENT OF NEW FISHERIES

1. A fishery resource that is not being actively fished at the time of the entry into force of this Convention shall be opened as a fishery only when the Commission 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 of intention to fish, 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 objective in article 2 of this Convention and conservation and management principles contained in article 3 of this Agreement. The measures shall ensure that the new fishery is developed on a precautionary and gradual basis until sufficient information is acquired to enable the Commission to adopt the full range of conservation and management measures referred to in articles 7, 18 and 21 of this Convention.

3. The Commission may, from time to time, adopt standard minimum conservation and management measures that are to apply in respect of some or all new fisheries prior to their commencement.

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Article 19 : SAFEGUARD OF THE MARINE ENVIRONMENT

1. The Commission shall adopt conservation and management measures for the protection of the marine ecosystems in which fisheries, and associated or dependent species, occur. Such measures may include:

- (a) spatial closures within the Convention Area;
- (b) temporal closures of 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 pollution from vessels.

2. The Commission, 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.

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Article 20 : CONTRACTING PARTY DUTIES

1. Each Contracting Party shall, in respect of its activities within the Area:

- (a) promptly implement this Convention and any conservation and management measures adopted by the Commission;
- (b) co-operate in furthering the objective of this Convention;

- (c) take all necessary measures in order to ensure the effectiveness of the conservation and management measures adopted by the Commission;
- (d) contribute to efforts to eliminate IUU fishing;
- (e) collect and exchange scientific, technical and statistical data pertaining to the fishery resources and their ecosystems of the Convention Area:
 - (i) complete and detailed information on commercial catches and fishing effort is collected;
 - (ii) appropriate measures are taken to verify the accuracy of such data;
 - (iii) biological sampling on the commercial catches is performed;
 - (iv) they contribute to the scientific knowledge of the fishery resources and their ecosystem; and
 - (v) information is made available in a timely manner to fulfil the requirements of the Scientific Committee and the Commission.
- (f) ensure that information on steps taken to implement the conservation, management and enforcement measures adopted by the Commission is provided in a timely manner

2. Each Contracting Party shall report to the Commission on an annual basis indicating how it has implemented the conservation and management measures and compliance and enforcement procedures adopted by the Commission and the outcome of any proceedings under article 34, including in respect of its flag vessels, ports, markets, industries and nationals operating on vessels engaged in fishing in the Area. In the case of coastal States that are Contracting Parties to this Convention, the report shall include information regarding the conservation and management measures they have taken for straddling stocks occurring in waters under their jurisdiction adjacent to the Area. Such reports shall be made publicly available.

3. Without prejudice to the primacy of the flag State, each Contracting Party shall, subject to its national law, take measures, or cooperate, to ensure that its nationals and fishing vessels owned or operated by its nationals conducting fishing activities in the Convention Area comply with the provisions of this Convention and with the conservation, management and enforcement measures adopted by the Commission. 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 Commission.

4. Without prejudice to the primacy of the flag State, each Contracting Party shall, subject to its national law, immediately investigate any infringements by its nationals, or foreign flagged fishing vessels owned or operated by its nationals, of the provisions of this Convention or any conservation, management and enforcement measure adopted by the Commission, including on the basis of relevant information communicated by any other Contracting Party, and fully report on the actions taken.

5. 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 21: FLAG STATE DUTIES

- 1. Each Flag State Contracting Party shall ensure that:
 - a. fishing vessels flying its flag operating in the Convention Area comply with the provisions of this Convention and the conservation, management and enforcement measures adopted by the Commission 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 activities within waters under national jurisdiction of the Coastal States.
- 2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing activities in the Convention Area unless it has been authorised to do so by the appropriate authorities of that Contracting Party.

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<#>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 Commission.¶
<#>such statistical, biological and other data and information as the Commission may decide are provided annually.¶

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3. Each Contracting Party shall:

- a. authorize the use of vessels flying its flag for fishing activities in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention and in accordance with international law;
- b. maintain a record of fishing vessels entitled to fly its flag and authorized to fish for the fishery resources, and ensure that, for all such vessels, such information as may be specified by the Commission is entered in that record. Contracting Parties shall exchange this information in accordance with such procedures as may be adopted by the Commission.

4. Each Contracting Party shall, in accordance with measures adopted by the Commission, investigate immediately and report fully on actions taken in response to an alleged infringement by a vessel flying its flag of measures adopted by the Commission.

5. In respect of an alleged infringement referred to in paragraph 4, each Contracting Party shall ensure that appropriate measures are taken without delay, including administrative or judicial proceedings, in accordance with its laws.

Measures taken or sanctions applied pursuant to paragraph 5 by flag States in conformity with national legislation shall be adequate in severity to effectively secure compliance, discourage further infringements and deprive offenders of the benefits accruing from their illegal activities

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<#>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 Commission; ¶
<#>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 Commission; ¶
<#>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; ¶
<#>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 Commission. ¶
2. No flag State Contracting Party shall allow any fishing ves... [59]

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Article 22; PORT STATE DUTIES

1. Measures taken by a port State in accordance with this Convention 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.

2. Each Contracting Party shall, in accordance with measures agreed by the Commission, *inter alia*, inspect fishing gear and catch on board fishing vessels and related documents, when such vessels are voluntarily in its ports or at its offshore terminals.

3. Each Contracting Party shall, in accordance with measures agreed by the Commission, adopt regulations in accordance with international law to prohibit landings and transshipments by vessels flying the flag of non-parties to this Convention where it has been established that the catch of a stock covered by this Convention has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission.

4. In the event that a port State considers that there has been a violation by a Contracting Party vessel of a conservation and management or control measure adopted by the Commission, the port State shall draw this to the attention of the flag State concerned and, as appropriate, the Commission. The port State shall provide the flag State and the Commission with full documentation of the matter, including any record of inspection. In such cases, the flag State shall transmit to the Commission details of actions it has taken in respect of the matter.

5. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

6. All measures taken under this article shall be taken in accordance with international law.

Article 23; MARKET- RELATED MEASURES

1. The Commission shall establish appropriate non-discriminatory market-related measures to monitor landings, trade and transport flows from the catch to the market, with a view to preventing, deterring and eliminating IUU fishing, including where necessary:

- (a) catch documentation schemes; and
- (b) mutual assistance between Contracting Parties to verify the execution of conservation and management measures through exchanges and verification of information and data.

2. The Commission shall, within two years of entry into force of this Convention, examine the need for catch documentation schemes in respect of fisheries. The need for such schemes shall be kept under regular review.

3. In implementing any appropriate market-related measures adopted by the Commission under paragraph 1, market State Contracting Parties shall take measures, in accordance with international law, to improve the transparency of their markets to allow the traceability of fish or fish products derived from fishery resources.

Article 24: - OBSERVATION, INSPECTION, COMPLIANCE AND ENFORCEMENT

1. The Contracting Parties, through the Commission, shall establish a system of observation, inspection, compliance and enforcement, hereafter "the System", to strengthen the effective exercise of flag State responsibility by Contracting Parties for fishing vessels and fishing research vessels flying their flags in the Convention Area. The major purpose of the System is to ensure that Contracting Parties effectively discharge their obligations under this Convention and, where applicable, under the 1995 Agreement, in order to ensure compliance with the conservation and management measures agreed by the Commission.

2. In establishing the System, the Commission shall be guided, *inter alia*, by the following principles:

- (a) fostering of cooperation among Contracting Parties to ensure effective implementation of the System;
- (b) a System which is impartial and non-discriminatory in nature;
- (c) verification of compliance with conservation and management measures agreed by the Commission; and
- (d) prompt action on reports of infringements in contravention of measures agreed by the Commission.

3. In applying these principles the System shall, *inter alia*, comprise the following elements:

- (a) control measures, including the authorisation of vessels to fish, the marking of vessels and fishing gear, the recording of fishing activities, and the near-to-real time reporting of vessel movements and activities by means such as satellite surveillance;
- (b) an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels, on a reciprocal basis;
- (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 measures 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 on infringements detected under the System, including standards of investigation, reporting procedures, notification of proceedings and sanctions, and other enforcement actions.

4. The System shall have a multilateral and integrated character.

5. In order to strengthen the effective exercise of flag State responsibility by Contracting Parties for fishing vessels and fishery research vessels flying their flags in the Convention Area, the interim arrangements set out in the Annex, which forms an integral part of this Convention, shall apply upon entry into force of this Convention and remain in force until the establishment of the System or until the Commission decides otherwise.

6. If, within two years of the entry into force of this Convention, the Commission has not established the System, the Commission shall, at the request of any Contracting Party, give urgent consideration to adoption of boarding and inspection procedures in order to strengthen the effective discharge by Contracting Parties of their obligations under this Convention and where applicable, under the 1995 Agreement. A special meeting of the Commission may be convened for this purpose.

Article 25: ANNUAL REPORT OF THE COMMISSION

1. The Commission shall publish an annual report, which shall include details of decisions taken by the Commission to achieve the objective of this Agreement. The report shall also provide information on actions taken by the Commission in

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¶ 1. The Commission shall establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing in the Area and to ensure compliance with its conservation and management measures.¶

¶ 2. The Commission shall adopt procedures for, *inter alia*:¶
(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 a (... [61])

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response to any recommendations from the General Assembly of the United Nations or the FAO.

2. Copies of the report shall be publicly available and shall be provided to the Secretary-General of the United Nations and the Director-General of the FAO.

Article 26: REVIEWS

The Commission shall, at appropriate intervals, initiate reviews and assessments of the adequacy of provisions of this Convention and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address any continuing problems in meeting the objective of this Convention as set out in Article II.

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2. The Commission 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 (... [63])

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Article 27: COOPERATION WITH OTHER ORGANISATIONS

1. The Commission shall cooperate, as appropriate, with other RFMOs, the FAO, with other specialised agencies of the United Nations, and with other relevant organisations on matters of mutual interest.
2. The Commission shall take account of the conservation and management measures or recommendations adopted by other regional fisheries management organisations and other relevant intergovernmental organisations that have competency in relation to areas adjacent to the Area or in respect of living resources not covered by this Convention, including dependent or associated species, and that have objectives that are consistent with, and supportive of, the objective of this Convention. It shall endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures or recommendations.
3. The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with such other organisations.

Article 28: CO-OPERATION WITH NON-PARTIES

1. Contracting Parties shall exchange information with respect to the activities of fishing vessels engaged in fishing in the Area that are flying the flags of non-Contracting Parties to this Convention. Contracting Parties shall take measures consistent with this Convention and international law to deter activities of such vessels which undermine the effectiveness of conservation and management measures applicable in the Area, and shall report to the Commission any action taken in response to fishing in the Area by non-Contracting Parties.
2. Taking account of articles 116 to 119 of the 1982 Convention, the Contracting Parties, individually or jointly, 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 Contracting Party or Parties affects the implementation of the objective of this Convention.
3. Contracting Parties shall, individually or jointly, request non-Contracting Parties to this Convention whose vessels fish in the Area to become party to this Convention and until then to cooperate fully in the implementation of conservation and management measures adopted by the Commission.
4. Contracting Parties, individually or jointly, shall seek the co-operation of any non-Contracting Party that has been identified as a relevant port State or market State.

Article 29: RELATION TO OTHER AGREEMENTS

This Convention shall not alter the rights and obligations of Contracting Parties which arise from the 1982 Convention and other agreements compatible with the 1982 Convention and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

Article 30: SETTLEMENT OF DISPUTES

1. Contracting Parties shall co-operate in order to prevent disputes.

2. If any dispute arises between two or more Contracting Parties concerning the interpretation or application of this Convention, including the statement, declaration and measures referred to in paragraph 5 of Article 20 as well as any actions taken by a Contracting Party further to its application of Article 20 (2) or (4), those Contracting Parties, hereinafter referred to as Contracting Parties to the dispute, shall seek to resolve their dispute by negotiation, inquiry, mediation, conciliation, ad hoc panel procedures, arbitration, judicial settlement or other peaceful means of their own choice.

3. Where a dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article 6 or matters related thereto, including the statement, declaration and measures referred to in paragraph 5 of Article 20 as well as any actions taken by a Contracting Party to the dispute further to its application of Article 20 (2) or (4), the parties to the dispute may submit the dispute to a non binding ad hoc panel constituted in accordance with the procedures laid down in Annex II of this Convention.

Where a dispute has been submitted to *ad hoc* panel procedures, the panel shall at the earliest possible opportunity confer with the Contracting Parties to the dispute and shall endeavour to resolve the dispute expeditiously. The panel shall present a report to the Contracting Parties to the dispute and through the Executive Secretary to the other Contracting Parties. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

If the Contracting Parties to the dispute accept the recommendations of the ad hoc panel, they shall within 14 days of receipt of the panel's recommendations, notify, through the Executive Secretary, all other Contracting Parties of the actions they intend to take with a view to implementing the recommendations. Consideration of the recommendations of the ad hoc panel may be referred to the Commission, in accordance with the appropriate procedures of the Organization.

Where a dispute has not been resolved through agreement among the Contracting Parties to the dispute following the recommendations of the *ad hoc* panel it may be referred, on request of any one of the Contracting Parties to the dispute, to a binding dispute settlement procedure as provided in paragraph 5.

4. Where the Contracting Parties to a dispute have agreed to submit the dispute to *ad hoc* panel procedures, they may agree at the same time to apply provisionally the relevant proposal adopted by the Commission until the recommendations of the panel are presented, unless the parties have settled the dispute beforehand by other means.

5. If the Contracting Parties to the dispute do not agree to any other peaceful means to resolve a dispute, or no settlement has been reached by recourse to these means, the dispute shall be referred, if one of the Contracting Parties to the dispute so requests, to binding dispute settlement procedures set out in Part XV of the 1982 Convention or Part VIII of the 1995 Agreement.

If binding dispute settlement procedures are invoked in accordance with this paragraph, the Contracting Parties to the dispute, unless they agree otherwise, shall apply provisionally any recommendation made by the ad hoc panel pursuant to paragraph 3, or, where applicable, Article 20 paragraph 10. Such provisional application of the panel's recommendation shall cease when the Contracting Parties to the dispute agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been referred has prescribed provisional measures or made a final determination or, in any case, at the date of expiration, if applicable, of the proposal of the Commission.

Subparagraph 3.3 shall apply *mutatis mutandis* to the provisional application of the ad hoc panel and to any final determination made by a court or tribunal to which the dispute was referred.

6. A court, tribunal or panel to which any dispute had been submitted under this Article shall apply the relevant provisions of:

- a) this Convention;
- b) the 1982 Convention;
- c) the 1995 Agreement,

as well as generally accepted standards for the conservation, management and enforcement as regards fishery resources and other rules of international law not incompatible with the said instruments, with a view to meet the objective of the

Convention as set out in Article II.

7. Provided, however:

(1) where a Contracting Party to a dispute is a State Party to the 1982 Convention, nothing in this Convention shall be argued or construed as preventing it from submitting the dispute to binding procedures pursuant to Part XV of the 1982 Convention as against any other State Party to that Convention; and

(2) where a Contracting Party to a dispute is a State Party to the 1995 Agreement, nothing in this Convention shall be argued or construed as preventing it from submitting the dispute to binding procedures pursuant to Article 30 of the 1995 Agreement as against any other State Party to that Agreement.

Article 31

4:

- AMENDMENTS TO THE CONVENTION

1. Any Contracting Party may propose amendments to this Convention to be considered and acted upon by the Commission at an annual or a special meeting. Any such proposals shall be sent to the Executive Secretary at least ninety days prior to the meeting at which it is proposed to be acted upon, and the Executive Secretary shall immediately transmit the proposal to all Contracting Parties.

2. The adoption of a proposed amendment to the Convention by the Commission shall require a three-fourth majority of the votes of all Contracting Parties. The text of any amendments so adopted shall be transmitted by the Depositary to all Contracting Parties.

3. An amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of written notification of approval by three-fourths of all Contracting Parties unless any other Contracting Party notifies the Depositary that it objects to the amendment within ninety days of the date of transmittal specified in the notification by the Depositary of such receipt, in which case the amendment shall not take effect for any Contracting Party. Any Contracting Party which has objected to an amendment may at any time withdraw that objection. If all objections to an amendment are withdrawn, the amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of the last withdrawal.

4. Any Party which becomes a Contracting Party to the Convention after an amendment has been adopted in accordance with paragraph 2 shall be deemed to have approved the said amendment.

5. The Depositary shall promptly notify all Contracting Parties of the receipt of notifications of approval of amendments, the receipt of notifications of objection or withdrawal of objections, and the entry into force of amendments.

6. Notwithstanding the provisions of paragraph 1-5, the Commission may, on the request of the Scientific Council, by a two-thirds majority vote of all Contracting Parties, if deemed necessary for scientific or statistical purposes, modify the boundaries of the scientific and statistical subareas, divisions and subdivisions set out in Annex I, provided that each coastal State exercising fisheries jurisdiction in any part of the area affected concurs in such action.

7. Notwithstanding the provisions of paragraph 1-5, the Commission may, after having consulted the Scientific Council, by a two-thirds majority vote of all Contracting Parties, if deemed necessary for management purposes, divide the Regulatory Area into appropriate regulatory divisions and subdivisions. These may subsequently be modified in accordance with the same procedure. The boundaries of any such divisions and subdivisions shall be defined in Annex I.

8. Notwithstanding the provisions of paragraphs 1-5, the Commission may by two thirds majority vote modify the rules concerning the panel procedures pursuant to Article XV set out in Annex II, which forms an integral part of this Convention..

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¶
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.¶

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¶
1. . Any Contracting Party may propose an amendment to this Agreement by providing to the Depositary the text of a proposed amendment at least 60 days in advance of a Commission meeting. The Depositary shall circulate a copy of this text to all other Contracting Parties promptly.¶

¶
2. . Such proposals for amendment to this Agreement shall be adopted by consensus. ¶

¶
3. . Amendments to this Agreement shall enter into force 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.¶

¶
4. . Any Contracting Party that acquires that status after the adoption of an amendment in accordance with paragr(... [72]

Article 32: SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL

1. This Convention shall be open for signature at ...until, by the States, regional economic integration organisation represented at the International Conference for the establishment of the South Pacific Regional Fisheries Management Organisation held at ... from ... to It shall thereafter be open for accession.

2. This Convention shall be subject to ratification, acceptance or approval by the Signatories and the instruments of ratification, acceptance or approval shall be deposited with, referred to in this Convention as "the Depository".

3. This Convention shall enter into force upon the first day of January following the deposit of instruments of ratification, acceptance or approval by not less than six Signatories;

4. Any party which has not signed this Convention may accede thereto by a notification in writing to the Depository. Accessions received by the Depository prior to the date of entry into force of this Convention shall become effective on the date this Convention enters into force. Accessions received by the Depository after the date of entry into force of this Convention shall become effective on the date of receipt by the Depository.

5. The Depository shall inform all Signatories and all Contracting Parties of all ratifications, acceptances or approvals deposited and accessions received.

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· (a) States and the 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 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 Depository

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Article 33: THE DEPOSITARY

1. [X] shall be the Depository of this Convention and of any amendments thereto. The Depository shall transmit certified copies of this Convention to all signatories and shall register this Convention with the Secretary-General of the United Nations pursuant to article 102 of the Charter of the United Nations.

2. The Depository 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 36 and of the date of entry into force of the Convention and of any amendments thereto.

Article 34: WITHDRAWAL

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

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 Agreement.

Annex I to the Convention
Scientific and Statistical Subareas, Divisions and Subdivisions

The scientific and statistical subareas, divisions and subdivisions provided for by Article 6 of this Convention shall be as follows:

1(a)

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Annex II to the Convention

Rules concerning the panel procedure pursuant to Article 21

1. The Executive Secretary shall establish and maintain a list of experts who are willing and able to serve as panellists. Each Contracting Party shall be entitled to nominate up to five experts whose competence in the legal, scientific or technical aspects of fisheries covered by the Convention is established. The nominating Contracting Party shall provide information on relevant qualifications and experience of each of its nominees.
2. The Contracting Parties to the dispute shall notify the Executive Secretary of their intention to submit a dispute to an ad hoc panel. The notification shall be accompanied by a full description of the subject matter of the dispute as well as the grounds invoked by each Party. The Executive Secretary shall promptly transmit a copy of the notification to all Contracting Parties.
3. Where another Contracting Party wishes to become Party to a dispute, it may join the process of constituting a panel, unless the original Parties to the dispute disagree. The Contracting Party wishing to become a party to the dispute should notify this intention within 15 days after having received the notification referred to in paragraph 2.
4. No sooner than 30 days and no later than 45 days after the notification referred to in paragraph 2, the Contracting Parties to the dispute shall notify the Executive Secretary of the constitution of the panel, including the names of the panellists and the time schedule for its work. Unless the Parties agree otherwise, the following shall apply:
 - a) the panel shall consist of three members;
 - b) the Contracting Parties to the dispute shall each select one panellist and agree on the third panellist;
 - c) the third panellist shall chair the panel;
 - d) the third panellist shall not be a national of either Contracting Party to the dispute and shall not be of the same nationality as either of the first two panellists; and
 - e) in case of a dispute between more than two Contracting Parties, Contracting Parties to the dispute which are of the same interest shall select one panellist jointly. If the Parties to the dispute can not agree on the nomination of the third panellist, the President of the International Tribunal of the Law of the Sea shall make the appointment, unless the Contracting Parties to the dispute agree that the appointment be made by another person or a third state.

The Executive Secretary shall promptly transmit a copy of the notification to all Contracting Parties.

5. Any Contracting Party, which is not a Party to the dispute, may attend all hearings of the panel, make written and oral submissions to the panel and receive the submissions of each Party to the dispute.
6. At the request of a Contracting Party to the dispute, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the dispute so agree.
7. Unless the Contracting Parties to the dispute otherwise agree, the panel shall, within 90 days from the constitution of the panel, make its report and recommendations referred to in paragraph 3 of Article 21 of the Convention. The report and recommendations shall be confined to the subject matter of the dispute and state the reasons on which they are based. The report and recommendations shall be communicated promptly, through the Executive Secretary, to all Contracting Parties.
8. The panel shall aim at reaching a consensus in its conclusions. If this is not possible the panel shall reach its conclusions by a majority of its members, who may not abstain from voting.
9. The panel may adopt any rules of procedure, which it deems necessary to accelerate the proceedings.
10. Costs of the panel shall be borne by the Contracting Parties to the dispute in equal parts.
11. In relation to the ad hoc panel established pursuant to Article 20 paragraphs 7 and 8, the parties shall be deemed to be the Commission and the objecting Contracting Party and the provisions of this Annex shall apply, with the exceptions of paragraphs 3 and 4 (e).

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<p>conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, and in accordance with international best practice;</p> <p>fishing shall be commensurate with the sustainable and efficient use of fishery resources and the general duty to protect and preserve the marine environment;</p> <p>overfishing and excess fishing capacity shall be prevented or eliminated;</p> <p>full and accurate data on fishing shall be collected, reported and shared in a timely and appropriate manner;</p> <p>decisions shall be based on the best scientific information available;</p> <p>the precautionary approach as described in paragraph 2 below;</p> <p>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;</p> <p>biodiversity in the marine environment shall be protected, taking into account the benefits of an ecosystem approach to fisheries management and the importance of deep sea ecosystems;</p> <p>effective compliance with conservation and management measures shall be ensured and sanctions for any infringements shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of any benefits from their violations;</p>		
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<p>2. 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 ecosystems in which they occur, and in particular the Contracting Parties shall:</p> <ul style="list-style-type: none"> (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. 		
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<p>develop processes in accordance with international law to assess flag States' performance with respect to implementation of their obligations under this Agreement and adopt proposals if appropriate to ensure flag State performance</p>		
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<p>develop processes in accordance with international law to assess flag States' performance with respect to implementation of their obligations under this Agreement and adopt proposals if appropriate to ensure flag State performance;</p>		
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<p>develop and implement effective market-related measures;</p>		
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<p>of the conservation and management measures adopted</p>		

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supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;

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The Compliance Committee shall meet once a year unless otherwise decided by the Commission.

3. The functions of the Compliance Committee shall be to:
 - (a) provide advice to the Commission on the implementation of, and compliance with, conservation and management measures adopted under this Agreement or under consideration by the Commission;
 - (b) provide such other advice relating to compliance with, and enforcement of, this Agreement as may be required by the Commission;
 - (c) coordinate compliance activities undertaken by or on behalf of the Commission.

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: EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES

SUBJECT TO FURTHER DISCUSSIONS

1. The Eastern and Western Sub-regional Management Committees shall each meet at least once a year unless otherwise decided by the Commission.
2. The functions of the Eastern and Western Sub-regional Management Committees shall be to develop and make recommendations to the Commission on conservation and management measures, including the establishment of a total allowable catch or total allowable fishing effort, and on participation in target fisheries, in respect of fishery resources in that part of the Area for which the Committee has responsibilities in accordance with paragraph 3 of this article. Such recommendations shall be consistent with the objective in article 2 of this Agreement, with the conservation and management principles in article 3 of this Agreement and with any measures of general application adopted by the Commission. In developing its recommendations each Committee shall also take into account the advice and recommendations of the Scientific Committee.
3.
 - (a) The Eastern Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Area that lies east of Meridian 120;
 - (b) The Western Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Area that lies west of Meridian 120.
4. The membership of the Eastern and Western Sub-regional Management Committees shall be the members of the Commission situated adjacent to, or whose vessels are fishing in, that part of the Area for which the Committees respectively have responsibilities. Any member of the Commission not represented on either one of the Sub-regional Management Committees may send a representative to participate in the deliberations of each Committee as an observer.
5. The Eastern and Western Sub-regional Management Committees shall make all efforts to adopt their recommendations to the Commission by consensus. If all efforts to reach agreement on a recommendation by consensus have been exhausted they shall adopt the recommendation by a two-thirds majority which must include at least two members that are situated adjacent to that part of the Area for which the relevant Committee has responsibilities and two other members whose vessels are fishing in that part of the Area.
6. Any extraordinary costs incurred for the work of either of the Sub-regional Management Committees shall be borne by the members of the relevant Committee.

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- (a) shall not participate in the taking of any decisions by the Commission; and
- (b)

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may not notify non-acceptance of any measure adopted by the Commission until it has paid all monies owing by it to the Organisation.

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Unless otherwise decided by the Commission, a Contracting Party that is in arrears with its payment of any monies owing to the Organisation by more than two years shall not participate in the taking of any decisions by the Commission.

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9. The financial affairs of the Organisation shall be audited annually by external auditors to be selected by the Commission.

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As a general rule, decisions by the Commission 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. 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 Commission 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 Chairperson that all efforts to reach a decision by consensus have been exhausted, the Chairperson shall fix a time during the Commission meeting for taking the decision by vote. At the request of any representative, the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same meeting as the Commission may decide. At that time, the Commission 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 Chairperson determines that there would be objection to such proposal, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.

5. (a) Decisions of the Commission on conservation and management measures of specific application to fishery resources in that part of the Area that lies to the east of Meridian 120, including the establishment of a total allowable catch or total allowable effort for that part of the Area, shall be based on the recommendations of the Eastern Sub-regional Management Committee;

(b) Decisions of the Commission on conservation and management measures of specific application to fishery resources in that part of the Area that lies the west of Meridian 120, including the establishment of a total allowable catch or total allowable fishing effort for that part of the Area, shall be based on the recommendations of the Western Sub-regional Management Committee.

6. If the Commission does not accept the recommendation of the relevant Sub-regional Management Committee on any matter it shall return the matter to that Sub-regional Management Committee for further consideration. The Sub-regional Management Committee shall reconsider the matter in the light of the views expressed by the Commission.
7. Subject to paragraphs 8 and 9, a decision of the Commission shall become binding 60 days after the date of its adoption.
8. 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 Commission, 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:
- the decision is inconsistent with the provisions of this Agreement, the 1982 Convention or the 1995 Agreement; or,
 - the decision unjustifiably discriminates in form or in fact against the Contracting Party concerned.
9. Pending the findings and recommendations of the review panel and any action decided upon by the Commission, no Contracting Party shall be required to give effect to the decision in question.
10. If the review panel finds that the decision of the Commission need not be modified, amended or revoked, the decision shall become binding on all Contracting Parties 30 days from the date of communication by the Chairperson of the findings and recommendations of the review panel.
11. If the review panel recommends to the Commission that the decision be modified, amended or revoked, the Commission 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 Commission meeting shall be convened within 60 days of the communication of the findings and recommendations of the review panel.
12. Nothing in this article is to be read as preventing the Commission from agreeing on techniques for taking and recording decisions outside the period of an actual Commission meeting.

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:CONSERVATION AND MANAGEMENT MEASURES

1. The Commission shall adopt conservation and management measures for

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fisheries, and consequent by-catch of non-target species, do not exceed those commensurate with the sustainable use of fishery resources;

determine specific biological reference points above which the sustainability of a

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fisheries, and for associated or dependent species.

2. The conservation and management measures shall include measures to:

ensure the long-term sustainability of fishery resources and to promote the objective of their responsible utilisation, taking in to account *inter alia*: the biological unity and other biological characteristics of the

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fishery; uncertainties relating to the size and productivity of the

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fisheries; biological reference points, the condition of the		
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fishery in relation to such biological reference points, levels and distributions of fishing mortality; the impact of fishing on non-target and associated or dependent species; and existing and predicted oceanic, environmental and socio-economic conditions;		
prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort for		
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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;		
ensure that in the event specific biological reference points are exceeded, Contracting Parties, without delay, take action to restore the		
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fishery to a level above those reference points within a reasonable period of time;		
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;		
allow for the precautionary and gradual development of new		
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fisheries as provided for in article 20 of this Agreement;		
regulate, where necessary, the conduct of fishing for scientific purposes;		
and shall include any other measures necessary to give effect to this Agreement.		
3. In addition, the Commission 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. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.		
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18: ESTABLISHMENT OF TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT OF

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FISHERIES

1. In addition to the measures adopted under article 17, the Commission shall determine a total allowable catch or total allowable fishing effort, including any catch or effort for scientific research, for all existing

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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

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fishery, the Commission shall take into account all of the following factors:

the objective in article 2 of this Agreement and the conservation and management principles in article 3 of this Agreement;

the conservation and management measures adopted by the Commission under articles 17 and 21 of this Agreement;

the advice and recommendations of the Scientific Committee;

the status and stage of development of the

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fishery;

fishing patterns of the

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fishery, catch of the same fishery resource within areas under national jurisdiction, and catch of associated or dependent species;

the interdependence of fishery resources, including by-catch of associated or dependent species, and of species governed by other regional fisheries management organisations;

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the fisheries management plans approved by the Commission

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;

regions and sub-regions of the Area identified on the basis of the geographical and biological characteristics of the

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fishery, including the areas and periods in which fishing may occur;

the interests of developing States in whose areas of national jurisdiction fishery resources of the

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fisheries also occur;

the fishing gear and technology which may be used in respect of different

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fisheries;

relevant ecological and biological factors limiting the nature of fishery resources that may be harvested;

relevant environmental factors which may have an effect upon fishery resources of the

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fishery and associated or dependent species;
relevant conservation and management measures adopted by other intergovernmental organisations.

2. The Commission shall regularly review the total allowable catch or total allowable fishing effort for

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TARGET

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including the allocation of the total allowable catch or total allowable fishing effort,

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compliance with the conservation and management measures under this Agreement, and with those of other regional fisheries management organisations;
demonstrated capacity and willingness to exercise effective flag State control over flag vessels;

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Each Contracting Party shall at the request of any other Contracting Party, and when provided with the relevant information, promptly 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 Commission. 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 months of such request. Reports on the progress of the investigation shall be provided to the Commission at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed.

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Each flag State Contracting Party shall take such measures as may be necessary to ensure that:
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 Commission;
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 Commission;
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;
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 Commission.

2. No flag State 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 flag State Contracting Party. A vessel may not be authorised to fish in the Area if it has been placed on the Commission IUU vessel list established under article 27.

3. Each flag State Contracting Party shall:
- authorise 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;
 - 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 Commission is entered in that register. Contracting Parties shall exchange this information in accordance with such procedures as may be agreed by the Commission;
 - ensure that vessels that have been placed on the Commission IUU vessel list cannot be entered in the register of vessels entitled to fly its flag and authorised to engage in fishing in the Area;
- in conformity with conservation and management measures adopted by the Commission, make available to each annual Commission meeting a report on its fishing in the Area;
- 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;
- adopt procedures to permit access by observers from other Contracting Parties to carry out functions as agreed by the Commission;
- at the request of any other Contracting Party, and when provided with the relevant information, promptly 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 Commission. 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 months of such request. Reports on the progress of the investigation shall be provided to the Commission at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed;
- ensure that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Agreement or of any conservation and management measures adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the Area until such time as it has complied with all outstanding sanctions imposed by the flag State Contracting Party in respect of the violation;
- 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 Commission.

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 sub-regional, 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:
- in accordance with the conservation and management measures adopted by the Commission, *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;
 - 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 Commission;
 - 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 Commission; and

implement best international standards in respect of port State measures in accordance with guidance to be developed by the Commission.

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 Commission, it shall draw this to the attention of the flag State Contracting Party concerned and of the Commission. The port State Contracting Party shall provide the flag State Contracting Party and the Commission with full documentation on the matter, including any record of inspection. In addition, the flag State Contracting Party shall transmit to the Commission 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.

MONITORING, COMPLIANCE AND ENFORCEMENT

1. The Commission shall establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing in the Area and to ensure compliance with its conservation and management measures.

2. The Commission shall adopt procedures for, *inter alia*:

(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 scientific information and information regarding apparent violations of conservation and management measures, taking into account the need to ensure the safety of observers;

(d) the control and supervision of transshipment;

(e) the follow-up of infringements detected, including standards of investigation, reporting procedures, notification of proceedings and sanctions, and other enforcement actions; and

(f) the establishment and operation of a Commission IUU vessel list, including criteria for listing and de-listing of fishing vessels.

3. The Commission, or a Contracting Party, may draw the attention of all Contracting Parties to any activity which, in the opinion of the Commission 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 Commission 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 Commission may adopt procedures to ensure that any vessel that has been placed on the Commission IUU vessel list is prohibited from enjoying any benefits in the fisheries.

6. If, within two years of the entry into force of this Agreement, the Commission has not adopted procedures as outlined in paragraph 2(b) above, or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Agreement to ensure compliance with the conservation and management measures adopted by the Commission, 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.

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including the establishment of fisheries management plans and actions taken by Contracting Parties to implement the plans

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1. The Commission shall organise regular reviews of the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this Agreement. Such reviews may include examination of the effectiveness of the provisions of the Agreement itself and shall be undertaken at least every three years.

2. The Commission 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 Commission.

3. The Commission 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. Any proposals for amendment to the provisions of this Agreement arising from any such review shall be dealt with in accordance with article 35.

4. The results of any such review shall be made publicly available following its submission to the Commission.

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In particular it shall seek to develop with such other organisations, a comprehensive cooperative information system relating to the ownership, control and movement of vessels engaged in activities within the competence of the Commission or such other organisations with the aim of reducing and eventually eliminating IUU fishing.

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

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AMENDMENTS

1. Any Contracting Party may propose an amendment to this Agreement by providing to the Depository the text of a proposed amendment at least 60 days in advance of a Commission meeting. The Depository shall circulate a copy of this text to all other Contracting Parties promptly.
2. Such proposals for amendment to this Agreement shall be adopted by consensus.
3. Amendments to this Agreement shall enter into force 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 Depository.
4. Any Contracting Party that acquires that status after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the Agreement as amended once that amendment has entered into force in accordance with paragraph 3