

DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC OCEAN

Revised draft framework proposed by WWF, October 2007

The Contracting Parties,

Committed to ensuring the long-term conservation and sustainable use of the living marine resources in the South Pacific Ocean whilst maintaining the integrity of the 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;

Recognizing that, under the 1982 Convention, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas;

Recognizing further that, under the 1982 Convention and the 1995 Agreement, States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas and, as appropriate, shall cooperate to establish subregional or regional fisheries organizations or arrangements with a view to taking the measures necessary for the conservation of such resources;

Further recognizing that, under the 1982 Convention and the 1995 Agreement, with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks on the adjacent high seas area shall seek to agree on the measures necessary for the conservation of those stocks in the adjacent high seas area;

Determined to cooperate effectively to eliminate illegal, unreported and unregulated fishing in the Convention Area;

Mindful that effective conservation and management measures require the application of the precautionary approach and the best scientific evidence available;

Conscious of the need to apply an ecosystem approach to fisheries management in order to minimize the risk of long-term or irreversible effects from fishing, avoid adverse impacts on the marine environment, preserve biodiversity and maintain the integrity of marine ecosystems;

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

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 DEFINITIONS

For the purposes of this Convention

- (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) “ecosystem approach to fisheries management” means an integrated approach under which decisions in relation to the management of fisheries resources are considered in the context of the functioning of the wider marine ecosystems in which they occur, with the aim of ensuring long-term conservation and sustainable use of those resources and the safeguarding of those ecosystems;
- (e) “fishing” means:
 - (i) searching for, catching, taking or harvesting fish;
 - (ii) attempting to search for, catch, take or harvest fish;
 - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;
 - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
 - (v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transshipment;
 - (vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel;

- (f) “fishing vessel” means any vessel used or intended for fishing, including support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (g) “regional economic integration organisation” means a regional economic integration organisation to which its member States have transferred competence over matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters;
- (r) “serious violation” has the same meaning as that set out in article 21(11) of the 1995 Agreement;¹
- (h) “transshipment” 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.

Article 2 OBJECTIVE

The objective of this Convention is to ensure, through effective management, the long-term conservation and sustainable use of the fishery resources in the Convention Area whilst maintaining the integrity of the marine ecosystems in which those resources occur.

Article 3 AREA OF APPLICATION AND SCOPE

1. *[Geographical Area to define scope of management and regulatory areas]*
2. Nothing in this Convention shall constitute recognition of the claims or positions of any of the Contracting Parties to this Convention concerning the legal status and extent of waters and zones claimed by any such Contracting Parties.
3. This Convention applies to all living marine resources within the Convention Area [*some exceptions may be negotiated*]. Conservation and management measures under this Convention shall be applied to specific stocks or species, or to specific areas within the Convention Area, as determined by the Commission.

PART II PRINCIPLES FOR CONSERVATION AND MANAGEMENT

Article 4 CONSERVATION AND MANAGEMENT PRINCIPLES

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

¹ As this reference appears only once in the Convention text, it could be incorporated there rather than add to the definitions section.

[Old article 3 as revised]

ARTICLE 5
**APPLICATION OF THE PRECAUTIONARY APPROACH AND ECOSYSTEM-
BASED FISHERIES MANAGEMENT**

ARTICLE 6
**IMPLEMENTATION OF PRINCIPLES IN AREAS UNDER NATIONAL
JURISDICTION**

1. The principles and measures for conservation and management enumerated in article [4] shall be applied by coastal States within areas under national jurisdiction in the Convention Area in the exercise of their sovereign rights for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks.
2. Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the 1982 Convention and the Agreement. This Convention shall be interpreted and applied in the context of and in a manner consistent with the 1982 Convention and the Agreement.

ARTICLE 7
COMPATIBILITY²

1. Conservation and management measures established for the Convention's Regulatory Area and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of living marine resources in their entirety. To this end, the members of the Commission have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.
2. In establishing compatible conservation and management measures for living marine resources in the Convention Area, the Commission shall:
 - (a) take into account the biological unity and other biological characteristics of the resources concerned and the relationships between the distribution of the resources, the fisheries and the geographical particularities of the region concerned, including the extent to which the resources occur and are fished in areas under national jurisdiction;
 - (b) take into account the conservation and management measures adopted and applied in accordance with article 61 of the 1982 Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the Convention Area as a whole do not undermine the effectiveness of such measures;

² Suggested draft based on exclusion of EEZs from the Convention Area.

(c) take into account previously agreed measures established and applied in accordance with the 1982 Convention and the Agreement in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(e) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. The coastal State shall ensure that the measures adopted and applied by it to marine living resources within areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same resources.

PART III THE SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT ORGANISATION

Article 8 THE ORGANISATION

1. There is hereby established the South Pacific Regional Fisheries Management Organisation (“the Organisation”), which shall function in accordance with the provisions of this Convention.

2. The Organisation shall consist of:

(a) a Commission;

(b) a Scientific Committee, a Compliance Committee, an Allocation Committee, 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 legal personality in accordance with international law 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 Convention. The privileges and immunities which the Organisation and its officers shall enjoy in the territory of a Contracting Party shall be determined by agreement between the Organisation and the Contracting Party concerned.

Article 9
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 Convention. Thereafter the Chairperson of the Commission shall convene an annual meeting unless the Commission decides otherwise.
4. Extraordinary meetings of the Commission may be held at such time and place as the Commission decides. The Commission may also, by consensus, agree on techniques for taking and recording decisions intersessionally.
5. The Commission, at its 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.
6. The Commission shall determine the location of the headquarters of the Organization.
7. All meetings of the Commission and its subsidiary bodies shall be public unless otherwise decided by the Commission.

Article 10
FUNCTIONS OF THE COMMISSION

1. The Commission shall, in accordance with the principles and specific provisions of this Convention, exercise the following functions:

...
2. The Commission shall publish an annual report, which shall include details of decisions taken by the Commission to achieve the objective of this Convention. The report shall also provide information on actions taken by the Commission in response to any recommendations from the General Assembly of the United Nations or the Food and Agriculture Organisation of the United Nations.

3. 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 Food and Agriculture Organisation of the United Nations.

Article 11 SUBSIDIARY BODIES

1. There are hereby established as subsidiary bodies of the Organisation a Scientific Committee, a Compliance Committee, and an Allocation Committee to provide advice and recommendations to the Commission on matters within their respective areas of competence.

2. Each Committee shall meet as often as is required for the efficient exercise of its functions, provided that each Committee shall, in any event, meet prior to the annual meeting of the Commission and shall report to the annual meeting the results of its deliberations.

3. All subsidiary bodies shall operate under the rules of procedure of the Commission unless otherwise decided by the Commission. Each Committee shall make every effort to adopt its reports by consensus. If every effort to achieve consensus has failed, the report shall indicate the majority and minority views and may include the differing views of the representatives of the members on all or any part of the report.

4. In the exercise of their functions, each Committee may, where appropriate, consult any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation and may seek expert advice as required on an ad hoc basis.

5. The Commission may establish such other subsidiary bodies as it deems necessary for the exercise of its functions, including working groups for the purpose of examining technical issues relating to particular species or stocks and reporting thereon to the Commission. In establishing such additional subsidiary bodies the Commission shall provide specific terms of reference and methods of work as may be required, provided always that such specific terms of reference are fully consistent with the objective and the conservation and management principles of this Convention and with the 1982 Convention and the 1995 Agreement.

6. In carrying out their functions, all subsidiary bodies shall take into consideration the relevant work of other subsidiary bodies established by the Commission, the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.

Article 12
SCIENTIFIC COMMITTEE

1. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers. Such representatives shall have appropriate qualifications or relevant experience in the area of competence of the Committee.
2. The functions of the Scientific Committee shall be to:

Article 12 bis
SCIENTIFIC SERVICES

[Model based on articles 12 and 13 of WCPFC]

Article 13
COMPLIANCE COMMITTEE

1. Each Contracting Party shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives and advisers. Such representatives shall have appropriate qualifications or relevant experience in the area of competence of the Committee.
2. The functions of the Compliance Committee shall be to:

[Model based on article 14 of WCPFC]

Article 14
ALLOCATION COMMITTEE

Article 15
SECRETARIAT

1. The Secretariat shall consist of an Executive Secretary and such other staff as the Commission may determine.
2. The Executive Secretary shall be the chief administrative officer of the Commission, and shall act in that capacity in all the meetings of the Commission and of any subsidiary body, and shall perform such other administrative functions as are entrusted to the Executive Secretary by the Commission.

3. The Secretariat functions shall include the following:
 - (a) receiving and transmitting the Commission's official communications;
 - (b) facilitating the compilation and dissemination of data necessary to accomplish the objective of this Convention;
 - (c) preparing administrative and other reports for the Commission and the Scientific and Technical and Compliance Committees;
 - (d) administering agreed arrangements for monitoring, control and surveillance and the provision of scientific advice;
 - (e) publishing the decisions of and promoting the activities of the Commission and its subsidiary bodies; and
 - (f) treasury, personnel and other administrative functions.

4. In order to minimize costs to Contracting Parties, the Secretariat to be established under this Convention 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.

Article 16 BUDGET

1. Each Contracting Party shall contribute to the budget of the Organization. The amount of the contribution to the budget shall be determined in accordance with a scheme which the Commission shall adopt and amend, as required, by consensus. The contribution by each Contracting Party shall be based on a combination of an equal basic fee and a variable fee based on the total catch taken within the Convention Area.
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 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.
4. If the Commission is unable to adopt a decision on the budget, the level of contributions to the administrative budget of the Commission shall be determined in

accordance with the budget for the preceding year for the purposes of meeting the administrative expenses of the Commission for the following year until such time as a new budget can be adopted by consensus.

5. 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 until it has paid all monies owing by it to the Commission.

6. 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.

PART IV DECISION-MAKING

Article 17 DECISION-MAKING

[Existing Article 14]

[It is recommended that the annex establishing a review panel should be modelled on WCPFC, Annex II]

PART V CONSERVATION AND MANAGEMENT MEASURES WITHIN THE CONVENTION AREA

[Existing articles 17 – 21 and 25]

PART VI TRANSPARENCY AND COOPERATION WITH OTHER ORGANISATIONS

[Existing articles 15 and 30]

PART VII OBLIGATIONS OF CONTRACTING PARTIES

[Existing article 22]

**PART VIII
DUTIES OF THE FLAG STATE**

[Existing article 23]

**PART IX
COMPLIANCE AND ENFORCEMENT**

[Existing articles 26 and 27]

**PART X
DUTIES OF PORT STATES**

[Existing article 24]

**PART XI
REQUIREMENTS OF DEVELOPING STATES**

[Existing article 16]

**PART XII
PEACEFUL SETTLEMENT OF DISPUTES**

[Existing article 34 (revised)]

**Article
PROCEDURES FOR THE SETTLEMENT OF DISPUTES**

1. The provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement apply, *mutatis mutandis*, to any dispute between members of the Commission, whether or not they are also Parties to the Agreement.
2. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Convention 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.

**PART XIII
REVIEW**

[Existing article 29]

**PART XIV
NON-PARTIES TO THIS CONVENTION**

[Existing article 31]

**PART XV
FINAL PROVISIONS**

[Existing articles 36 (Signature, ratification, acceptance, approval), 37 (Accession), 38 (Entry into force), 43 (Reservations), 33 (Relation to other agreements), 35 (Amendment), 41 (Withdrawal), 42 (Termination), 32 (Fishing entities), 40 (Participation by territories), 39 (Depositary)]

(Order changed).

A new provision on annexes should be added:

**Article XX
ANNEXES**

1. The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.
2. The Annexes to this Convention may be revised from time to time and any member of the Commission may propose revisions to an Annex. Notwithstanding the provisions of article XX, if a revision to an Annex is adopted by consensus at a meeting of the Commission, it shall be incorporated in this Convention and shall take effect from the date of its adoption or from such other date as may be specified in the revision.