

CONVENTION ON THE CONSERVATION AND MANAGE-
MENT OF HIGH SEAS FISHERY RESOURCES IN
THE SOUTH PACIFIC OCEAN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF
HIGH SEAS FISHERY RESOURCES IN THE SOUTH PACIFIC
OCEAN, DONE AT AUCKLAND, NEW ZEALAND, NOVEMBER 14,
2009



APRIL 22, 2013.—Treaty was read the first time, and together with the
accompanying papers, referred to the Committee on Foreign Relations
and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 22, 2013.*

To the Senate of the United States:

I transmit herewith the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the “Convention”), done at Auckland, New Zealand, November 14, 2009, with a view to receiving the advice and consent of the Senate to ratification. I also transmit, for the information of the Senate, the report of the Secretary of State on the Convention that includes an article-by-article analysis.

The Convention establishes a regional fisheries management organization through which Parties will give effect to their duty to cooperate in the conservation and sustainable use of the high seas fishery resources in the South Pacific Ocean and to safeguard the marine ecosystems in which these resources occur.

The Convention requires Parties to apply specific conservation and management principles and approaches in giving effect to the objective of the Convention. These principles and approaches are enshrined in existing international instruments to which the United States is a party, such as the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of December 4, 1995. In addition, the Convention requires that Parties design and adopt specific conservation and management measures, such as limitations on catch or effort, time or area closures, and gear restrictions.

The Department of State, Department of Commerce, U.S. Coast Guard, and relevant U.S. stakeholders strongly support the Convention. The legislation necessary to implement the Convention will be submitted separately to the Congress for its consideration. I therefore recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 16, 2012.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, done at Auckland, New Zealand, November 14, 2009 (the "Convention"). The Convention was signed by the United States on January 31, 2011. Also enclosed is an overview of the Convention, which includes a detailed article-by-article analysis.

The Convention establishes a regional fisheries management organization through which Parties will give effect to their duty to cooperate in the conservation and sustainable use of the high seas fishery resources in the South Pacific Ocean and safeguard the marine ecosystems in which these resources occur.

The Convention requires Parties to apply specific conservation and management principles and approaches in giving effect to the objective of the Convention. These principles and approaches are enshrined in existing international instruments to which the United States is a party, such as 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. In addition, the Convention requires Parties design and adopt specific conservation and management measures, such as limitations on catch or effort, time or area closures, and gear restrictions.

The U.S. Department of State, the U.S. Department of Commerce, the U.S. Coast Guard, and relevant U.S. stakeholders strongly support the Convention.

The Convention will require implementing legislation, which is being drafted and will be submitted to the Congress for its consideration when appropriate.

I recommend, therefore, that you transmit the Convention to the Senate for its advice and consent to ratification at the earliest possible date.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: As stated.

EXECUTIVE SUMMARY

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

In 2005, the Governments of Australia, New Zealand, and Chile launched international negotiations to develop a regime to ensure the long-term conservation and sustainable use of non-highly migratory fisheries resources and to safeguard the marine ecosystems in which these resources occur in the South Pacific Ocean. The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (“Convention”), which resulted from those negotiations, builds on the best practices of other regional fisheries management organizations and strengthens the implementation of modern principles of international fisheries management embodied in relevant agreements (e.g., 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 (“the 1995 Agreement”), the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”), and the 1993 Food and Agriculture Organization of the United Nations (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas [“the Compliance Agreement”]) and other instruments and guidelines that have been developed by the FAO. Through the South Pacific Regional Fisheries Management Organization (SPRFMO), a new regional fisheries management organization established under the Convention, Parties shall apply widely an ecosystem approach to fisheries management through an integrated approach that considers management decisions in the context of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

The United States took a leading role in negotiations to develop this legally binding instrument. While the United States does not currently have any vessels fishing in the Convention area covered by the SPRFMO, it might in the future. After eight sessions, the negotiations concluded successfully and the Convention was adopted on November 14, 2009. The Convention opened for signature on February 1, 2010; the United States signed on January 31, 2011.

The Convention establishes a regional fisheries management organization through which Parties will cooperate in the conservation and sustainable use of the high seas fishery resources of the South Pacific Ocean and, in so doing, safeguard the marine ecosystems in which these resources occur. The Convention requires Parties to apply specific conservation and management principles and approaches in giving effect to the objective of the Convention. These principles and approaches are enshrined in existing international instruments to which the United States is a party, such as the 1995 Agreement. In addition, the Convention requires that Parties design and adopt specific conservation and management measures, such as limitations on catch or effort, time or area closures, and gear restrictions.

The Convention is strongly supported by the relevant U.S. government agencies and relevant U.S. stakeholders.

VIII

Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO Convention)

Overview

Introduction

The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO Convention) establishes a regional fisheries management organization through which Parties will give effect to their duty to cooperate in the conservation and sustainable use of the high seas fishery resources of the South Pacific Ocean and, in so doing, safeguard the marine ecosystems in which these resources occur.

The SPRFMO Convention builds on the best practices of other regional fisheries management organizations and strengthens the implementation of the modern principles of international fisheries management embodied in relevant agreements, including 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, the 1982 United Nations Convention on the Law of the Sea, the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and other instruments and guidelines that have been developed by the Food and Agriculture Organization of the United Nations. Through the South Pacific Regional Fisheries Management Organization (SPRFMO), a new regional fisheries management organization established under the Convention, Parties shall apply widely an ecosystem approach to fisheries management through an integrated approach that considers management decisions in the context of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and, in so doing, safeguard those marine ecosystems.

Article-by-Article Analysis

Article 1, (“Definitions”), contains several definitions. Among these is the definition of “fisheries resources,” which outlines the scope of the living marine resources within the Convention Area to which the SPRFMO Convention applies. The definition is inclusive of fish, mollusks, and crustaceans generally, but specifically excludes sedentary species under the national jurisdiction of coastal

states, highly migratory species (HMS) listed in Annex I of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), anadromous and catadromous species, marine mammals, marine reptiles, and sea birds. The exclusion of HMS species is intended to prevent overlap in competence with existing regional fisheries management organizations (RFMOs) in the Pacific established to conserve and manage those resources—specifically the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission.

Paragraph 2 of this article is significant because, in conjunction with Articles 36 and 37, it provides for the participation in the work of the Commission by the European Union (EU) and Taiwan. Article 1 defines a regional economic integration organization as any organization 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. The EU is one such regional organization. In the case of the EU, Article 1 specifies that the definition of Contracting Party is inclusive of regional economic integration organizations that have consented to be bound by the Convention. Articles 36 and 37 further provide that the Convention shall be open for accession to regional economic integration organizations. Taiwan's participation as a fishing entity is achieved through the application, *mutatis mutandis*, Article 305, paragraphs 1(c), (d), and (e) in UNCLOS; and by Articles 36 and 37 of the Convention, which provides in relevant part that the Convention shall be open for accession to States, regional economic integration organizations, and "other entities" having an interest in fishery resources. Annex IV then details the process by which an entity such as Taiwan can commit to be bound by the terms of the Convention and thus gain participatory rights in the work of the Commission. Providing for Taiwan's direct participation in SPRFMO is important for the Commission's success in meeting its goals and objectives. Taiwan has a sizeable global fishing fleet and has a fishing presence in the Convention Area.

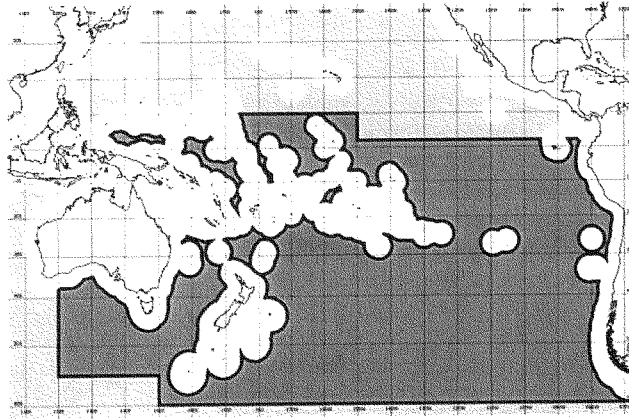
Article 2, ("Objective"), states that the objective of the SPRFMO Convention is to ensure the long-term conservation and sustainable use of fishery resources in the Convention Area and, in so doing, to safeguard the marine ecosystems in which these resources occur. The objective will be met through the development and implementation of conservation and management measures which apply the precautionary approach and an ecosystem approach to fisheries management.

Article 3, ("Conservation and Management Principles and Approaches"), requires Contracting Parties, the Commission, and subsidiary bodies established under

Article 6 to apply specific conservation and management principles in giving effect to the objective of the Convention and to carry out decision making under the Convention. Such decision making requires consideration of the best available scientific information, and conservation and management approaches, including the precautionary and ecosystems approaches, to give effect to the objective of the Convention. These principles and approaches are enshrined in existing international instruments to which the United States is a party, such as 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 ("The 1995 Agreement").

Article 4, ("Compatibility of Conservation and Management Measures"), requires that conservation and management measures adopted in areas under national jurisdiction and for the high seas be compatible in order to ensure the effective conservation and management of fishery resources that straddle such areas. The article also provides that the Commission's initial conservation and management measures shall take due account of, and not undermine the effectiveness of, existing conservation and management measures established by coastal State Contracting Parties for areas under their national jurisdiction and by Contracting Parties in respect of their flag vessels fishing in the adjacent high seas of the Convention Area.

Article 5, ("Area of Application"), defines the waters of the Pacific Ocean in which the Convention applies. The map below is a pictorial illustration of the area of application of the Convention that is described in geographical terms in Article 5. The description of the area of application is without prejudice to the positions concerning the legal status and extent of waters and zones claimed by any Party to the Convention. The map itself is not part of the Convention text and has no legal status.



Article 6, (“The Organization”), establishes the South Pacific Regional Fisheries Management Organization, consisting among other things of a Commission, a Scientific Committee, a Compliance and Technical Committee, both Eastern Sub-regional and Western Sub-regional Management Committees, a Finance and Administration Committee, and a Secretariat which shall be located in New Zealand or at such other place as may be decided by the Commission.

Article 7, (“The Commission”), provides that each Party shall be a member of the Commission and appoint one member and alternative representatives, experts, and advisers. Article 7 specifies that the Commission shall elect a Chairperson and Vice-Chairperson for terms of two years each with eligibility for re-election for no more than two consecutive terms. The Commission will meet on an annual basis, or as frequently as the Commission deems necessary taking into consideration the principle of cost effectiveness.

Article 8, (“Functions of the Commission”), sets forth the functions to be exercised by the Commission. The Commission is empowered, among other functions, to adopt conservation and management measures to achieve the objectives of the Convention; to develop rules and programs for data collection and reporting; to establish monitoring, control, surveillance, compliance, and enforcement procedures, to adopt measures to prevent, deter, and eliminate illegal, unreported and unregulated fishing; and to exercise any other function and take any other decisions that may be necessary for achieving the objective of the Convention. Article 8 also anticipates the development of processes, in accordance

with international law, to assess flag State performance with respect to the implementation of their obligations under the Convention and to adopt proposals, if appropriate, to promote implementation of such obligations.

Article 9, (“Subsidiary Bodies”), allows for the creation, by the Commission, of additional subsidiary bodies beyond those enumerated in Article 6. The Commission may establish subsidiary bodies on a permanent or temporary basis. The work of the subsidiary bodies must be consistent with the objective, conservation, management principles, and approaches contemplated by the Convention, the 1982 Convention, and the 1995 Agreement.

Article 10, (“Scientific Committee”), specifies that each member of the Commission is entitled to appoint one representative to serve on the Scientific Committee, along with alternate representatives and advisers. Article 10 also sets forth the functions of the Scientific Committee. One of the primary functions of the Scientific Committee is to conduct scientific assessments of the health relevant fishery resources, and then, based on the results of such assessments, to provide advice and recommendations to the Commission regarding the options for conservation and management of fish stocks. The Scientific Committee will also advise the Commission on the impacts of fishing on the marine ecosystem as a whole within the Convention Area, meaning that consideration is also given to impacts on non-target species such as sharks, marine mammals, sea turtles, and other non-target species. The Scientific Committee will also consider the presence of any vulnerable marine ecosystems (VMEs) and recommend measures to prevent significant adverse impacts to the same. The reports of the Scientific Committee will be made available to the public, and the Commission is directed to arrange for periodic independent peer review of the Scientific Committee’s work.

Article 11, (“Compliance and Technical Committee”), specifies that each member of the Commission is entitled to appoint one representative to serve on the Compliance and Technical Committee, along with alternate representatives and advisers. Article 11 also sets forth the functions of the Compliance and Technical Committee. The Compliance and Technical Committee is meant to monitor and review the implementation of, and compliance with, conservation and management measures adopted under the Convention and to provide advice and recommendations to the Commission. Moreover the Compliance and Technical Committee is also meant to review the cooperative measures for monitoring, control, and surveillance and enforcement adopted by the Commission and to provide advice and recommendations to the Commission.

Article 12, (“Eastern and Western Sub-regional Management Committees”), elaborates on the two sub-regional management committees provided for in Article 6 and Annex I. Initially, the geographic boundary dividing the Convention Area into Eastern and Western sub-regions will lie at Meridian 120° West, according to Annex I, but the Commission may amend the boundary line at any time by consensus. Article 12 allows the Commission to assign to one sub-regional management committee primary responsibility for developing and making recommendations to the Commission on conservation and management measures, in accordance with Article 20, and on participation in fishing for fishery resources, in accordance with Article 21, for the parts of the Convention Area described in Annex I. The Commission may assign this responsibility to a sub-regional management committee for a specific fishery resource even if the range of that resource should extend beyond the part of the Convention Area and into the exclusive economic zone (EEZ) of a coastal State Party. The Committees are directed to strive to make recommendations by consensus and based on the advice from the Scientific Committee, but failing that may make recommendations approved by two-thirds majority of the members.

States are members of a sub-regional committee if they have fished in the sub-region in the past two years, intend to do so within the next two years, or if their jurisdictional waters are adjacent to that sub-region. Other members of the Commission not meeting one or more of these criteria may still participate in the work of either Sub-regional Management Committee.

Article 13, (“Finance and Administration Committee”), provides that each member of the Commission is entitled to a single representative on the Finance and Administration Committee, along with alternate representatives and advisers. The Finance and Administration Committee is meant to advise the Commission on issues relating to the budget and other financial and administrative issues referred by the Commission.

Article 14, (“Secretariat”), provides for the appointment, with the approval of the Contracting Parties on such terms as they may determine, of a chief administrative officer of the Secretariat. The chief administrative officer of the Secretariat will be the Executive Secretary and is empowered to ensure the effective functioning of the Secretariat in a cost effective manner, including the authority to hire additional Secretariat staff, consistent with any regulations established by the Commission. The functions of the Secretariat are to include any responsibilities delegated by the Commission.

Article 15, (“Budget”), directs the Commission to adopt at its first meeting a set of financial regulations and a budget to fund the work of the Commission and its committees. The Commission is also expected to adopt a formula for calculating members’ contributions to the annual budget. The formula must be combination of a variable fee based on the total catches of such fisheries resources as may be specified by the Commission and a basic fee. A portion of the budget formula must also take into account the economic status of members, such as Gross National Income per capita. Decisions on the budget, finance regulations, and contribution formula require consensus. The Secretariat must prepare for the Finance and Administration Committee projected budgets for the two succeeding financial years. At each annual meeting, the Commission is expected to adopt a budget for the succeeding financial year, but if they fail to do so, the contributions of members will be based on the budget from the preceding year, thus ensuring that the Commission will not be left without operational funds until such time as the Commission is able to adopt a budget by consensus. Unless otherwise decided by the Commission, a member of the Commission that is in arrears with its payment of any monies owed by more than two years may not participate in the taking of any decisions by the Commission until it has paid all monies owed by it to the Commission. The financial activities shall be conducted in accordance with financial regulations adopted by the Commission and are subject to an annual audit by independent auditors appointed by the Commission.

Article 16, (“Decision Making”), provides guidance for decisions other than those that the Convention specifies must be taken by consensus. If efforts to reach consensus have been exhausted, decisions on matters of procedure shall be taken by a majority of members casting votes. Decisions on matters of substance require a three-fourths majority of members casting votes. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.

Article 17, (“Implementation of Commission Decisions”), and Annex II (“Review Panel”) of the Convention outline how decisions taken by the members will be implemented. Generally, decisions on questions of substance by the Commission become binding 90 days after the Executive Secretary notifies all members of the Commission. Within 60 days of a decision on a question of substance by the Commission, a member of the Commission may present the Executive Secretary an objection on the grounds that the decision either unjustifiably discriminates against it or is inconsistent with the Convention or relevant international law as reflected in the 1982 Convention or the 1995 Agreement. At the time of their objection, the objecting member must specify the grounds for objection and adopt

alternative measures that are equivalent in effect to relevant decision of the Commission. Objections are examined by a Review Panel established and guided by the contents of Annex II. Within 45 days after the establishment of a Review Panel it must transmit its findings and recommendations on whether the grounds specified for the objection are justified and whether the alternative measures adopted are equivalent in effect to the decision to which the objection has been presented. These findings and recommendations are subject to implementation as set forth in Annex II. Finally, nothing in Article 17 limits the right of a member of the Commission at any time to refer a dispute concerning the interpretation or application of the Convention for binding settlement in accordance with the dispute settlement provisions.

Article 18, (“Transparency”), contains provisions to promote transparency in the work of the Commission and its subsidiary bodies. The Commission will be responsible for publishing and maintaining a public record of all reports and adopted measures. This article also specifically provides for observation of, and participation in, the meetings of the Commission and its subsidiary bodies by other stakeholders with an interest in its work, such as non-Contracting Parties, intergovernmental organizations, and non-governmental organizations.

Article 19, (“Recognition of the Special Requirements of Developing States”), recognizes the special needs of developing states that are Party to the Convention and requires the Commission to cooperate to enhance their participation in the fishery, their capacity to participate in the work of Commission, and their ability to effectively implement measures adopted by the Commission. The Commission is required to take into account the requirements of developing state members when developing and implementing conservation and management measures, taking into account their reliance on relevant marine resources for food security, the need to avoid adverse impacts on small-scale and subsistence fisheries, and the necessity of ensuring that such members do not bear a disproportionate conservation burden. Members of the Commission will also cooperate to enhance the capacities of developing state members to participate in relevant fisheries, to conserve and manage their fisheries, and to participate in the work of the Commission, such as through helping such states send representatives to the meetings of the Commission and related bodies. Participation of developing state members in the work of the Commission will be aided through the establishment of a voluntary fund. This article also anticipates that assistance to such members may take a number of forms. Such assistance shall be directed towards, among other things, improved conservation and management through data collection and reporting; stock assessment and scientific research; and monitoring, control, and

enforcement capabilities. The anticipated benefits of this cooperation will accrue not only to the developing state member recipients, but also to the Commission as a whole because these members may become more effective in their implementation of adopted conservation and management measures.

Article 20, (“Conservation and Management Measures”), contains a number of provisions that track closely with the requirements and objectives contained in U.S. laws governing fisheries such as the Magnuson-Stevens Fisheries Conservation and Management Act of 1976, as amended. Measures adopted by the Commission must ensure the long-term sustainability of fishery resources, prevent and eliminate overfishing and excess fishing capacity, and address broader marine ecosystem concerns such as impacts to dependent or associated species and habitat degradation. Vulnerable marine ecosystems (VMEs) are given special attention. Significant adverse impacts to VMEs must be avoided and precautionary measures taken where uncertainty exists regarding the severity of impacts to VMEs from fishing.

This article also specifically contemplates that conservation and management measures may include the adoption of reference points, restrictions on the nature and extent of fishing including establishment of a total allowable catch (TACs) or effort limits, time/area closures, size limits, and the regulation of gear types and fishing methods.

Where TACs or total allowable fishing effort restrictions are to be used, this article specifies a number of factors that must be taken into account and also provides guidance on the development and application of such measures to fishery resources that straddle the Convention Area and the exclusive economic zones (EEZs) of coastal State Parties. Conservation and management measures adopted by the Commission and applied within the Convention Area and the measures adopted by coastal States Parties are to be compatible, in accordance with Article 4. The Convention Area includes only the high seas, in accordance with Article 5; however, Article 20 includes provisions such that if all of the relevant coastal States Parties consent, then measures adopted by the Commission may be applied within their respective EEZs in order to cover the full range of a straddling stock.

The Commission is directed to adopt emergency measures, consistent with Article 16 and based on the best scientific evidence available, intersessionally and on a temporary basis, in the event that fishing activity or a natural phenomenon or human-caused disaster presents a serious threat to the sustainability of fishery resources or the marine ecosystem. Such emergency measures are not subject to

the objection procedure set forth in Article 17, but may be the subject of dispute settlement procedures under the Convention, and nevertheless must be reconsidered at the next meeting of the Commission.

Article 21, (“Participation in Fishing for Fishery Resources”), requires that the Commission take into account several factors when taking decisions regarding participation in fishing. These factors include the allocation of total allowable catch or fishing effort with the goal of ensuring that such decisions are made in a fair and equitable manner. Listed criteria include, among others, patterns of historic fishing and catch, levels of compliance with measures adopted by the Commission, the effectiveness of flag State control over fishing vessels, compliance with data reporting requirements, and the interests and aspirations of coastal and developing states and territories. Conservation and management measures for straddling stock allocations of catch or participatory rights determined by the Commission can apply to fishing that takes place in the EEZs of coastal State Contracting Parties, to the extent that the coastal states consent. Where consent is not given, the Commission and coastal State Contracting Party must cooperate in accordance with Article 4. In taking decisions under Article 21, the Commission may also have regard, as appropriate, to performance with respect to other international fisheries management regimes.

Article 22, (“New or Exploratory Fisheries”), provides that a fishery for a new stock or for a fishery with a new gear type can only open when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery, and, as appropriate, non-target and associated or dependent species. The Commission must also adopt appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities. The preliminary measures adopted by the Commission pursuant to Article 21 are meant to ensure that the new fishery resource is developed on a precautionary and gradual basis until sufficient information is acquired to enable the Commission to adopt appropriately detailed conservation and management measures.

Article 23, (“Data Collection, Compilation and Exchange”), directs the Commission to take the 1995 Agreement into account when developing standards, rules, and procedures for reporting and handling of data, with the goals of collecting and compiling scientific data to aid in fisheries management and contributing to eliminating or reducing illegal, unregulated, and unreported (IUU) fishing. The rules and procedures are to cover the data reporting to the Commission, compilation and management of data provided to the Commission,

the dissemination of collected data within the bounds of confidentiality, and the sharing of such data with other organizations, as appropriate. Robust data collection and exchange is meant to help ensure that the Commission can make its decisions based on the best available science, and help fight against IUU fishing, consistent with the goals found in the 2006 amendments to the U.S. High Seas Driftnet Moratorium Protection Act, as Amended by the Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act.

Article 23 also specifies that data such as the number of vessels operating under the Convention, the status of covered resources, and joint undertakings with other organizations be made publicly available.

Article 24, (“Obligations of Members of the Commission”), enumerates a set of four general obligations of members. In addition to a general obligation to further the objectives of the Convention, members are required to effectively implement measures adopted by the Commission, to take measures necessary to prevent and deter IUU fishing, and to collect and report data according to rules to be developed by the Commission. Members are required to submit annual reports detailing steps they have taken to implement the measures adopted by the Commission and, in the case of coastal states, report compatible measures that they have applied within their EEZs. Members shall also take measures to ensure compliance by their nationals and vessels owned or operated by their nationals. Where violations are suspected, members are to immediately initiate an investigation and then, consistent with their domestic laws, report back to the Commission on the outcome of investigations. In addition to strengthening the work of the Commission, these reporting and accountability requirements may aid the United States in implementing the provisions of the High Seas Driftnet Moratorium Protection Act, which seeks to prevent, deter, and eliminate IUU fishing.

Article 25, (“Flag State Duties”), requires members to ensure that fishing vessels flying their flag comply with the provisions of the Convention and measures adopted by the Commission, and ensure that such vessels do not engage in any activity which undermines the effectiveness of such measures when operating in the Convention Area. Members are responsible for ensuring that all vessels flying their flags do not conduct unauthorized fishing within waters under national jurisdiction adjacent to the Convention Area, carry and operate equipment sufficient to comply with vessel monitoring system standards and procedures adopted by the Commission, and only land or transship fishery resources caught in the Convention Area in accordance with standards and procedures adopted by the Commission. Members are to ensure that any fishing vessel flying their flag that

conducts fishing in the Convention Area is authorized by that member to do so, and shall prevent unauthorized vessels from conducting such fishing. A member must authorize the use of fishing vessels flying its flag only where it is capable of exercising effectively its responsibilities over such vessels under the Convention and in accordance with international law. Members shall create and maintain a current register of vessels flying their flag and authorized to fish in the Convention Area.

This article also restates the duty of a member to investigate and report on actions taken in response to alleged instances of non-compliance by fishing vessels flying its flag. Additionally, members are to ensure that penalties applied for violations are sufficient in severity to discourage future violations and to deprive offenders of any benefits from their non-compliance. Additionally, where it has been established, in accordance with its laws, that serious violation of the provisions of the Convention or conservation and management measures adopted by the Commission by a fishing vessel flying its flag has occurred, a member shall ensure that the vessel ceases fishing activities in the Convention Area until all outstanding sanctions imposed by that member in respect of the violation have been complied with.

Article 26, (“Port State Duties”), affirms the right and duty of a port State to promote the effectiveness of measures adopted by the Commission when a vessel that has been fishing in the Convention Area enters its ports. Port State members may inspect fishing vessels, the catch, gear, logbooks, and other documentation, either on their own initiative or upon request of the flag State. If the member has reason to believe that a vessel in its port has violated the terms of the Convention, including a conservation and management measure, the member must notify the relevant flag State and, where appropriate, the Commission, and provide the flag State with full documentation of the incident so that the flag State can promptly investigate. Article 26 states that nothing contained therein affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

Article 27, (“Monitoring, Compliance and Enforcement”), gives the Commission authority to adopt appropriate monitoring, control, and surveillance measures and procedures to ensure compliance with the Convention and the conservation and management measures adopted by the Commission. The Article allows the Commission to adopt a number of procedures and programs that are considered standard for modern regional fisheries management organizations in order to promote compliance and to prevent and deter IUU fishing. The Commission will

establish a record of vessels authorized to fish in the Convention Area, a program for monitoring vessel positions in near real-time via satellite, programs for inspecting vessels at sea and in port, and a program to regulate and monitor transshipment of fish catches. The Commission will also establish a process for identifying vessels engaged in IUU fishing and adopt additional appropriate measures to prevent, deter, and eliminate IUU fishing.

This article also contemplates that the Commission may develop a procedure for the application of measures, including trade-related measures, to any State, member of the Commission, or entity whose fishing vessels engage in fishing activities that diminish the effectiveness of, or otherwise fail to comply with, the conservation and management measures adopted by the Commission. Any implementation of trade-related measures by a member must be consistent with their obligations relating to the World Trade Organization.

Article 28, (“Observer Programme”), specifies that the Commission shall have an observer program established within three years of entry into force of the Convention. The program will consist of independent and impartial fisheries observers who will gather and verify catch and other scientific data. Observer data will be used to support the work of the Commission and its subsidiary bodies, including for the purposes of examining compliance with conservation and management measures. The specifics of the observer program’s operation, such as the levels of coverage appropriate for each fishery, will be developed by the Commission taking into account advice from the Scientific Committee and Compliance and Technical Committee, along with other standards, rules, and procedures.

Article 29, (“Annual Report of the Commission”), provides that the Commission shall publish and make publicly available an annual report, including among other things, details of the decisions taken by the Commission.

Article 30, (“Reviews”), requires the Commission to undertake a review of its performance at least every five years. The review process will include some level of participation by persons of competence independent of the Commission. Most existing regional fisheries management organizations to which the United States is a member have undertaken such performance reviews. The use of experts from outside the Commission in such review promotes transparency. The scope of the review will include the effectiveness of conservation and management measures adopted by the Commission, as well as the adequacy of the Convention provisions.

The results of the review will be made publicly available and any recommendations will be reviewed by the Commission.

Article 31, (“Cooperation with Other Organizations”), provides that the Commission shall cooperate, as appropriate, with other organizations, particularly intergovernmental organizations that have competency in relation to the Convention Area or areas adjacent to it, regarding living marine resources. The Article also provides that the Commission shall take into account the conservation and management measures or recommendations adopted by such organizations and endeavor to ensure that its decisions are compatible with, and supportive of, those measures. The Commission is to make appropriate arrangements to consult and cooperate with such organizations, in particular with respect to reducing and eventually eliminating IUU fishing.

Article 32, (“Non-Parties”), directs members to work independently and collectively to monitor fishing activities of non-members to the Convention and to take measures consistent with the Convention and international law to deter activities that may undermine the effectiveness of the conservation and management measures adopted by the Commission. Members can apply measures collectively or individually to address problems arising from fishing by non-members. Members are encouraged to request that a non-member whose vessels fish for covered species in the Convention Area become a party to the Convention or otherwise agree to cooperate fully in the implementation of the conservation and management measures adopted by the Commission.

Article 33, (“Relation to other Agreements”), provides that nothing in this Convention prejudices the rights, jurisdiction, and duties under relevant provisions of international law as reflected in the 1982 Convention or the 1995 Agreement. Moreover, the Article establishes that the Convention shall not alter the rights and obligations of Contracting Parties that arise from other agreements compatible with this Convention and that do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

Article 34, (“Settlement of Disputes”), provides that Contracting Parties shall use best endeavors to settle disputes by amicable means. If the relevant Contracting Parties are unable to do so, then they may use the dispute resolution procedures set forth in Part VIII of the 1995 Agreement. Part VIII of the 1995 Agreement incorporates dispute resolution procedures from the 1982 Convention, which include the possibility of compulsory, binding dispute settlement. Part VIII of the 1995 Agreement also provides a mechanism for a party not party to the 1982

Convention to specify which binding dispute settlement procedure that party will accept. The United States is party to the 1995 Agreement, as well as other RFMO agreements, such as the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which include a similar dispute settlement procedure.

Article 35, (“Amendments”), specifies a procedure for consideration and adoption of possible amendments to the Convention. Amendments to the Convention can be adopted by the Commission by a three-fourths majority vote of the Contracting Parties present and voting. Such amendments will then take effect 120 days after the Depositary receives notification of approval from three-fourths of all Contracting Parties, unless another Contracting Party lodges an objection with the Depositary within 90 days. If such an objection is notified, then the amendment does not come in force for any Contracting Party until all objections have been withdrawn.

Article 36, (“Signature, Ratification, Acceptance and Approval”), provides that the Convention was open for signature by the States, regional economic integration organizations, and other entities described in Article 1 from February 1, 2010, through January 31, 2011, subject to subsequent ratification, acceptance, or approval, as necessary.

Article 37, (“Accession”), indicates that the Convention is open for accession following the closure of the period for signature. The Convention is currently open for accession. Instruments of accession are to be deposited with the Depositary, the Government of New Zealand.

Article 38, (“Entry into Force”), provides that the Convention will enter into force 30 days following receipt by the depositary of the eighth instrument of ratification, accession, acceptance, or approval, provided that such accessions include at least three coastal States adjacent to the Convention Area and at least three States that are not coastal States. If these conditions are not met within three years after the adoption of the Convention, the previous requirements do not apply and it will enter into force six months after receipt of the tenth accession. Following entry into force, subsequent accessions become effective 30 days following receipt by the Depositary of an instrument of ratification.

Article 39, (“the Depositary”), provides that the Government of New Zealand will serve as the Depositary of the Convention.

Article 40, (“Participation by Territories”), provides that regional territories of Contracting Parties can, with the authorization of the Contracting Party, participate in the work of the Commission. At a minimum, such territories are granted the right to be present at meetings of the Commission and its subsidiary bodies and to speak at such meetings. The nature and extent of participation of authorized territories beyond that will be provided for by rules of procedure to be developed by the Commission.

Article 41, (“Withdrawal”), specifies that withdrawals from the Convention become effective one year following the receipt of notification by the Depositary.

Article 42, (“Termination”), provides that the Convention will terminate if and when the number of Contracting Parties drops below four.

Article 43, (“Reservations”), states that no reservations or exceptions to the Convention are permitted.

Article 44, (“Declarations and Statements”), provides that declarations or statements can be made when signing or acceding to the Convention so long as they do not purport to exclude or modify the legal effect of the provisions of the Convention.

Article 45, (“Annexes”), specifies that the Convention Annexes are integral to the Convention and, except where expressly provided otherwise, references to the Convention include the Annexes.

Annex I, (“Parts of the Convention Area for which the Eastern and Western Sub-regional Management Committees have Responsibilities”), establishes the responsibility of (1) the Eastern Sub-regional Management Committee for developing and recommending to the Commission conservation and management measures for the part of the Convention Area that lies east of Meridian 120° West and (2) the Western Sub-regional Management Committee for developing and recommending to the Commission conservation and management measures for the part of the Convention Area that lies west of Meridian 120° West.

Annex II, (“Review Panel”), establishes the procedures for a review panel in accordance with Article 17, paragraph 5, of the Convention. The Review Panel is established to settle disputes or objections by members of the Commission to decisions of the Commission. The panel consists of three members appointed from the list of experts in the field of fisheries drawn up and maintained by the FAO

pursuant to Annex VIII, Article 2, of the 1982 Convention or a similar list maintained by the Executive Secretary. Each member of the Commission may nominate up to five experts to serve on the panel list. The objecting member of the Commission appoints one member to the panel and the Chairperson of the Commission appoints another member to the panel. A third presiding panel member is appointed by agreement of the objecting member of the Commission and the Chairperson of the Commission, and failing that, by the Permanent Court of Arbitration in the Hague, Netherlands. Provision is made along similar lines for a five person Review Panel if there is an objection from additional members of the Commission to an intended decision by the Commission.

The Review Panel is considered to be established on the date that the third member is appointed, and this third member shall chair the Review Panel. The Review Panel is empowered to determine its own rules of procedure and must convene a hearing within 30 days of its establishment. The objecting member of the Commission bears 70 percent of the costs incurred by the Review Panel and the Commission bears the remaining 30 percent. The Review Panel must, within 45 days of its establishment, transmit its findings and recommendations to the Executive Secretary in accordance with Article 17, paragraph 5, of the Convention. Any member of the Review Panel may attach a separate or dissenting opinion, and all decisions must be done by majority vote.

If the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission, and the alternative measures have equivalent effect, those measures will become binding on the objecting member or members. The Review Panel may also recommend modifications to the measures in dispute, which will take effect within 60 days upon implementation by the Commission unless the objecting member or members institute dispute settlement proceedings under the Convention. If the Commission decides not to implement the recommendation of the Review Panel to modify discriminatory measures, it may seek further review through the dispute resolution procedures described in the Convention. A similar procedure is followed for objections as to inconsistency. Moreover, if the Review Panel decides that the objection is not justified, the objecting member must, within 45 days, implement the decision or institute dispute settlement proceedings. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention, the decision is not binding on the objecting member or members of the Commission pending decisions made in those proceedings.

Annex III, (“Procedures for the Establishment and Implementation of a Total Allowable Catch or Total Allowable Fishing Effort for a Straddling Fishery Resource when Applied Throughout its Range”), enables the Commission to receive advice and data from the members and relevant technical and scientific sub-committees of the Commission for the establishment of the allowable catch and allowable fishing effort for a straddling fishery resource. On the basis of this advice and data, the Commission is required to establish the total allowable catch or fishing effort for the fisheries resource throughout its range. The Commission is empowered, pursuant to Articles 16 and 20, to adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded. Annex III, paragraph 5, makes special mention of the conservation and management of *Trachurus murphyi* (jack mackerel). Annex III provides that the Commission give primary consideration to establishing a total allowable catch for this species, without prejudice to any other conservation and management measure that it considers appropriate to ensure the sustainable use of this fishery resource.

Annex IV, (“Fishing Entities”), establishes the procedures for a fishing entity to deliver a written instrument to the Depositary which expresses its commitment to abide by the terms of the Convention and comply with any conservation and management measures. Paragraph 3 permits a fishing entity to participate in the decision making of the Commission if it has expressed its commitment to abide by the terms of the Convention. Paragraph 4 provides for dispute resolution, through binding arbitration under the rules of the Permanent Court of Arbitration, of disputes involving a fishing entity bound by the Convention.

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

The Contracting Parties,

Committed to ensuring the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and in so doing safeguarding the marine ecosystems in which the resources occur;

Recalling relevant international law as reflected in 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 Conference of the Food and Agriculture Organisation of the United Nations at its twenty eighth session on 31 October 1995;

Recognising that under international law reflected in the relevant provisions of the above agreements, States have a duty to cooperate with each other in the conservation and management of living resources in the areas of the high seas and, as appropriate, to cooperate 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, under international law reflected in the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, coastal States have waters under national jurisdiction within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fishery resources and conserving living marine resources upon which fishing has an impact;

Recognising economic and geographical considerations and the special requirements of developing States, in particular the least developed among them, and small island developing States, and territories and possessions, and their coastal communities, in relation to the conservation, management and sustainable development of fishery resources and equitable benefit from those 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 the integrity of marine ecosystems and minimise the risk of long-term or irreversible effects of fishing;

Mindful that effective conservation and management measures must be based on the best scientific information available and the application of the precautionary approach and an ecosystem approach to fisheries management;

Convinced that the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and the protection 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:

Article 1 DEFINITIONS

1 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) 'Commission' means the Commission of the South Pacific Regional Fisheries Management Organisation established by Article 6;
- (d) 'Convention Area' means the Area to which this Convention applies in accordance with Article 5;
- (e) '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;
- (f) 'fishery resources' means all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission; but excluding:

- (i) sedentary species in so far as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;
 - (ii) highly migratory species listed in Annex I of the 1982 Convention;
 - (iii) anadromous and catadromous species; and
 - (iv) marine mammals, marine reptiles and sea birds;
- (g) 'fishing' means:
- (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose;
 - (iii) transshipment and any operation at sea in support of, or in preparation for, any activity described in this definition; and
 - (iv) the use of any vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition;
- but does not include any operation related to emergencies involving the health or safety of crew members or the safety of a vessel;
- (h) 'fishing vessel' means any vessel used or intended for fishing, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (i) 'flag State' means, unless otherwise indicated:
- (i) a State whose fishing vessels are entitled to fly its flag; or
 - (ii) a regional economic integration organisation in which fishing vessels are entitled to fly the flag of a member State of that regional economic integration organisation;
- (j) 'IUU fishing' means activities as referred to 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;
- (k) 'nationals' includes both natural and legal persons;
- (l) 'port' includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or re-supplying;
- (m) '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;

- (n) 'serious violation' has the same meaning as that set out in Article 21 paragraph 11 of the 1995 Agreement and such other violations as may be specified by the Commission; and
- (o) 'transhipment' means the unloading of all or any of the fishery resources or fishery resource products derived from fishing in the Convention Area on board a fishing vessel to another fishing vessel either at sea or in port.

2

- (a) '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.
- (b) This Convention applies, *mutatis mutandis*, to any entity referred to in Article 305, paragraph 1 (c), (d) and (e), of the 1982 Convention which becomes a party to this Convention, and to that extent "Contracting Party" refers to any such entity.

Article 2 OBJECTIVE

The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

Article 3 CONSERVATION AND MANAGEMENT PRINCIPLES AND APPROACHES

1 In giving effect to the objective of this Convention and carrying out decision making under this Convention, the Contracting Parties, the Commission and subsidiary bodies established under Article 6 paragraph 2 and Article 9 paragraph 1 shall:

- (a) apply, in particular, the following principles;
 - (i) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account best international practices;
 - (ii) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-

target and associated or dependent species and the general obligation to protect and preserve the marine environment;

- (iii) overfishing and excess fishing capacity shall be prevented or eliminated;
 - (iv) full and accurate data on fishing, including information relating to impacts on the marine ecosystems in which fishery resources occur, shall be collected, verified, reported and shared in a timely and appropriate manner;
 - (v) decisions shall be based on the best scientific and technical information available and the advice of all relevant subsidiary bodies;
 - (vi) cooperation and coordination among Contracting Parties shall be promoted to ensure that conservation and management measures adopted by the Commission and conservation and management measures applied in respect of the same fishery resources in areas under national jurisdiction are compatible;
 - (vii) marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance;
 - (viii) the interests of developing States, in particular the least developed among them and small island developing States, and of territories and possessions, and the needs of developing State coastal communities, shall be recognised;
 - (ix) effective compliance with conservation and management measures shall be ensured and sanctions for any violations shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of the benefits accruing from their illegal activities; and
 - (x) 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; and
- (b) apply the precautionary approach and an ecosystem approach in accordance with paragraph 2.

2

- (a) 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 to preserve the marine ecosystems in which they occur, and in particular the Contracting Parties, the Commission and subsidiary bodies shall:

- (i) be more cautious when information is uncertain, unreliable, or inadequate;
 - (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and
 - (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.
- (b) An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

Article 4

COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES

1 The Contracting Parties recognise the need to ensure compatibility of conservation and management measures established for fishery resources that are identified as straddling areas under the national jurisdiction of a coastal State Contracting Party and the adjacent high seas of the Convention Area and acknowledge their duty to cooperate to this end.

2 Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of straddling fishery resources in their entirety. In developing compatible conservation and management measures for straddling fishery resources Contracting Parties shall:

- (a) take into account the biological unity and other biological characteristics of the fishery resources and the relationships

between the distribution of the resources, the fishing activities for those resources and the geographical particularities of the region concerned, including the extent to which the fishery resources occur and are fished in areas under national jurisdiction;

- (b) take into account the respective dependence of the coastal States and the States fishing on the high seas on the fishery resources concerned; and
- (c) ensure that such measures do not result in harmful impact on the living marine resources as a whole in the Convention Area.

3 The Commission's initial conservation and management measures shall take due account of, and not undermine the effectiveness of, existing conservation and management measures established by relevant coastal State Contracting Parties in respect of areas under national jurisdiction and by Contracting Parties in respect of their flag vessels fishing in the adjacent high seas of the Convention Area.

Article 5 AREA OF APPLICATION

1 Except as otherwise provided, this Convention applies to waters of the Pacific Ocean beyond areas of national jurisdiction in accordance with international law:

- (a) east of a line extending south along the 120° meridian of east longitude from the outer limit of the national jurisdiction of Australia off the south coast of Western Australia to the intersection with the 55° parallel of south latitude; then due east along the 55° parallel of south latitude to the intersection with the 150° meridian of east longitude; then due south along the 150° meridian of east longitude to the intersection with the 60° parallel of south latitude;
- (b) north of a line extending east along the 60° parallel of south latitude from the 150° meridian of east longitude to the intersection with the 67° 16' meridian of west longitude;
- (c) west of a line extending north along the 67° 16' meridian of west longitude from the 60° parallel of south latitude to its intersection with the outer limit of the national jurisdiction of Chile then along the outer limits of the national jurisdictions of Chile, Peru, Ecuador and Colombia to the intersection with the 2° parallel of north latitude; and

- (d) south of a line extending west along the 2° parallel of north latitude (but not including the national jurisdiction of Ecuador (Galapagos Islands)) to the intersection with the 150° meridian of west longitude; then due north along the 150° meridian of west longitude to its intersection with 10° parallel of north latitude, then west along the 10° parallel of north latitude to its intersection with the outer limits of the national jurisdiction of the Marshall Islands, and then generally south and around the outer limits of the national jurisdictions of Pacific States and territories, New Zealand and Australia until it connects to the commencement of the line described in paragraph (a) above.

2 The Convention shall also apply to waters of the Pacific Ocean beyond areas of national jurisdiction bounded by the 10° parallel of north latitude and the 20° parallel of south latitude and by the 135° meridian of east longitude and the 150° meridian of west longitude.

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

4 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.

Article 6 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 Convention in order to achieve the objective of this Convention.

2 The Organisation shall consist of:

- (a) a Commission;
- (b) a Scientific Committee;
- (c) a Compliance and Technical Committee;
- (d) an Eastern Sub-regional Management Committee;

- (e) a Western Sub-regional Management Committee;
- (f) a Finance and Administration Committee;
- (g) a Secretariat,

and any other subsidiary bodies that the Commission may, from time to time, establish in accordance with Article 9 paragraph 1 to assist it in its work.

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 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, an agreement between the Organisation and the Contracting Party hosting the Secretariat.

4 The Secretariat of the Organisation shall be in New Zealand or at such other place as may be decided by the Commission.

Article 7 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 from among the Contracting Parties, 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 in the same capacity. 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 this Convention. Thereafter the Chairperson of the Commission shall convene an annual meeting, unless the Commission decides otherwise, at a time and location to be decided by the Commission. The Commission shall hold such other meetings as may be necessary to carry out its functions under this Convention.

4 The principle of cost effectiveness shall apply to the frequency, duration and scheduling of meetings of the Commission and its subsidiary bodies.

Article 8
FUNCTIONS OF THE COMMISSION

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

- (a) adopt conservation and management measures to achieve the objective of this Convention, including, as appropriate, conservation and management measures for particular fish stocks;
- (b) determine the nature and extent of participation in fishing for fishery resources including, as appropriate, for particular fish stocks;
- (c) develop rules for the collection, verification, reporting, storing and dissemination of data;
- (d) promote the conduct of scientific research to improve knowledge of fishery resources and marine ecosystems in the Convention Area and of the same fishery resources in adjacent waters under national jurisdiction, and, in collaboration with the Scientific Committee, establish procedures for the conduct of fishing for fishery resources for scientific purposes in the Convention Area;
- (e) cooperate and exchange data with members of the Commission and with relevant organisations, coastal States, territories and possessions;
- (f) promote compatibility of conservation and management measures in the Convention Area, adjacent areas under national jurisdiction and adjacent areas of high seas;
- (g) develop and establish effective monitoring, control, surveillance, compliance and enforcement procedures, including non-discriminatory market-related and trade-related measures;
- (h) develop processes in accordance with international law to assess flag State performance with respect to the implementation of their obligations under this Convention and adopt proposals, if appropriate, to promote implementation of such obligations;
- (i) adopt measures to prevent, deter and eliminate IUU fishing;
- (j) develop rules for cooperating non-Contracting Party status under this Convention;

- (k) review the effectiveness of the provisions of this Convention and the conservation and management measures adopted by the Commission in meeting the objective of this Convention;
- (l) supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;
- (m) guide the Commission's subsidiary bodies in their work;
- (n) adopt by consensus the budget of the Organisation, the financial regulations of the Organisation and any amendments thereto, and its rules of procedure, which may include procedures for taking and recording decisions intersessionally;
- (o) adopt and amend as necessary any other regulations necessary for the exercise of its functions and those of its subsidiary bodies; and
- (p) exercise any other function and take any other decisions that may be necessary for achieving the objective of this Convention.

Article 9 SUBSIDIARY BODIES

1 The Commission may establish other subsidiary bodies, additional to the Scientific Committee, the Compliance and Technical Committee, the Eastern Sub-regional Management Committee, the Western Sub-regional Management Committee and the Finance and Administration Committee as may be required. Such additional subsidiary bodies may be established on a permanent or temporary basis taking into account cost implications.

2 In establishing such additional subsidiary bodies the Commission shall provide specific terms of reference and methods of work, provided always that such specific terms of reference are consistent with the objective and the conservation and management principles and approaches of this Convention and with the 1982 Convention and the 1995 Agreement. Such terms of reference and methods of work may be reviewed and amended as appropriate by the Commission from time to time.

3 All subsidiary bodies shall report, advise and make recommendations to the Commission and contribute to regular reviews of the effectiveness of conservation and management measures adopted by the Commission.

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

5 All subsidiary bodies may establish working groups. Subsidiary bodies may also seek external advice as required in accordance with any general or specific guidance provided by the Commission.

6 All subsidiary bodies shall operate under the rules of procedure of the Commission unless otherwise decided by the Commission.

Article 10 SCIENTIFIC COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Scientific Committee shall be to:

- (a) plan, conduct and review scientific assessments of the status of fishery resources including, in cooperation with the relevant coastal State Contracting Party or Parties, fishery resources that straddle the Convention Area and areas under national jurisdiction;
- (b) provide advice and recommendations to the Commission and its subsidiary bodies based on such assessments including, as appropriate:
 - (i) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
 - (ii) management strategies or plans for fishery resources based on such reference points; and
 - (iii) analyses of conservation and management alternatives, such as the establishment of total allowable catch or total allowable fishing effort at different levels, that estimate the extent to which each alternative would achieve the objective or objectives of any management strategy or plan adopted, or under consideration, by the Commission;
- (c) provide advice and recommendations to the Commission and its subsidiary bodies on the impact of fishing on the marine ecosystems in the Convention Area including advice and recommendations on the identification and distribution of

vulnerable marine ecosystems, the likely impacts of fishing on such vulnerable marine ecosystems and measures to prevent significant adverse impacts on them;

- (d) encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources and the marine ecosystems in the Convention Area including knowledge in relation to fishery resources straddling the Convention Area and areas under national jurisdiction; and
- (e) provide such other scientific advice to the Commission and its subsidiary bodies as it considers appropriate, or as may be requested by the Commission.

3 The rules of procedure of the Commission shall provide that where the Scientific Committee is unable to provide its advice by consensus, it shall set out in its report the different views of its members. The reports of the Scientific Committee shall be made publicly available.

4 The Commission, taking into account any recommendations from the Scientific Committee, may engage the services of scientific experts to provide information and advice on the fishery resources and marine ecosystems in the Convention Area and any related matters that may be relevant to the Commission's consideration of conservation and management measures.

5 The Commission shall make appropriate arrangements for the periodic independent peer review of the Scientific Committee's reports, advice and recommendations.

Article 11 COMPLIANCE AND TECHNICAL COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Compliance and Technical Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Compliance and Technical Committee shall be to:

- (a) monitor and review the implementation of, and compliance with, conservation and management measures adopted under this Convention and provide advice and recommendations to the Commission;
- (b) provide such other information, technical advice and recommendations as it considers appropriate or as may be

requested by the Commission relating to the implementation of and compliance with the provisions of this Convention and the conservation and management measures adopted, or under consideration, by the Commission; and

- (c) review the implementation of cooperative measures for monitoring, control, and surveillance and enforcement adopted by the Commission and provide advice and recommendations to the Commission.

Article 12

EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES

1 The Eastern and Western Sub-regional Management Committees shall, on their own initiative or at the request of the Commission, develop and make recommendations to the Commission on conservation and management measures, in accordance with Article 20, and on participation in fishing for fishery resources, in accordance with Article 21, for the parts of the Convention Area described in Annex I. Such recommendations shall be consistent with any measures of general application adopted by the Commission and shall require the consent of the coastal State Contracting Party or Parties concerned on the matters on which such consent is required under Article 20 paragraph 4 and Article 21 paragraph 2. Where appropriate the Committees shall make all efforts to coordinate their recommendations.

2 The Commission may by consensus amend Annex I at any time to adjust the geographic coordinates it contains. Such amendment shall take effect from the date of its adoption, or any other date specified in the amendment.

3 The Commission may decide to assign to one Sub-regional Management Committee primary responsibility for developing and making recommendations to the Commission in accordance with this Article for a specific fishery resource even if the range of that resource should extend beyond the part of the Convention Area for which that Committee has responsibilities in accordance with Annex I.

4 Each Committee shall develop its recommendations on the basis of the advice and recommendations of the Scientific Committee.

- 5
 - (a) Members of the Commission situated adjacent to the part of the Convention Area for which a Committee has responsibility in accordance with this Article, or whose fishing vessels:

- (i) are currently fishing in that area; or
 - (ii) have fished in that area within the past two years; or
 - (iii) are fishing for a specific fishery resource assigned to that Committee pursuant to paragraph 3, including in areas under national jurisdiction adjacent to the Convention Area shall be members of that Committee.
- (b) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) that gives notice to the Secretariat of an intention to fish within two years of the notice in the part of the Convention Area for which a Committee has responsibility in accordance with this Article, shall become a member of that Committee. If the notifying member of the Commission does not fish in that part of the Convention Area within two years of the notice, it shall cease to be a member of that Committee.
- (c) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) or (b) may send a representative to participate in the work of that Committee.
- (d) For the purposes of this paragraph, "fishing" includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).

6 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, recommendations shall be adopted by a two-thirds majority of the members of the relevant Sub-regional Management Committee. Reports to the Commission may include majority and minority views.

7 The recommendations made in accordance with this Article will be the basis of conservation and management measures and decisions referred to in Articles 20 and 21, respectively, that shall be adopted by the Commission.

8 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.

Article 13
FINANCE AND ADMINISTRATION COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Finance and Administration Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Finance and Administration Committee shall be to advise the Commission on the budget, on the time and place of meetings of the Commission, on publications of the Commission, on matters relating to the Executive Secretary and the staff of the Secretariat and on such other financial and administrative matters as may be referred to it by the Commission.

Article 14
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 with the approval of the Contracting Parties on such terms as they may determine.

3 Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such staff regulations as may be determined by the Commission.

4 The Executive Secretary shall ensure the effective functioning of the Secretariat.

5 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 15
BUDGET

1 The Commission, at its first meeting, shall adopt a budget to fund the Commission and its subsidiary bodies, and shall also adopt financial regulations. All decisions on the budget and financial regulations, including decisions relating to the contributions of members of the Commission and

the formula for calculating such contributions, shall be taken by consensus.

2 Each member of the Commission shall contribute to the budget. The amount of the annual contributions due from each member of the Commission shall be a combination of a variable fee based on its total catch of such fishery resources as may be specified by the Commission and a basic fee and shall take account of its economic status. For a member of the Commission whose only catch in the Convention Area is that of its territory or territories adjoining the Convention Area the economic status shall be that of the territory concerned. The Commission shall adopt and may amend a formula for the calculation of these contributions which shall be set out in the financial regulations of the Commission.

3 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.

4 The Executive Secretary shall submit a draft of the annual budget for the two succeeding financial years to each member of the Commission together with a schedule of contributions, not less than 60 days before the meeting of the Finance and Administration Committee where the Committee will adopt its recommendations to the Commission. 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. Each annual meeting of the Commission shall adopt a budget for the succeeding financial year.

5 If the Commission is unable to adopt a 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.

6 Following the annual meeting of the Commission, the Executive Secretary shall notify each member of the Commission of its contribution due as calculated under the formula adopted by the Commission pursuant to paragraph 2 and as soon as possible thereafter each member of the Commission shall pay its contribution to the Organisation.

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

8 A Contracting Party that becomes party to this Convention during the course of a financial year shall contribute in respect of that financial year a part of the contribution calculated in accordance with the provisions of this Article that is proportionate to the number of complete months remaining in the year from the date that the Convention enters into force for that Party.

9 Unless otherwise decided by the Commission, a member of the Commission that is in arrears with its payment of any monies owed 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 owed by it to the Commission.

10 The financial activities of the Organisation 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.

Article 16 DECISION MAKING

1 As a general rule, decisions by the Commission shall be taken by consensus. For the purpose of this Article, "consensus" means the absence of any formal objection made at the time the decision was taken.

2 Except where this Convention expressly provides that a decision shall be taken by consensus, if the Chairperson considers that all efforts to reach a decision by consensus have been exhausted:

- (a) decisions of the Commission on questions of procedure shall be taken by a majority of the members of the Commission casting affirmative or negative votes; and
- (b) decisions on questions of substance shall be taken by a three-fourths majority of the members of the Commission casting affirmative or negative votes.

3 When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.

Article 17
IMPLEMENTATION OF COMMISSION DECISIONS

1 Decisions on questions of substance adopted by the Commission shall become binding on the members of the Commission in the following manner:

- (a) the Executive Secretary shall promptly notify each decision to all members of the Commission; and
- (b) subject to paragraph 2, the decision shall become binding upon all members of the Commission 90 days after the date of transmittal specified in the notification pursuant to subparagraph (a) "the date of notification".

2

- (a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification "the objection period". In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.
- (b) A member of the Commission that presents an objection shall at the same time:
 - (i) specify in detail the grounds for its objection;
 - (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and
 - (iii) advise the Executive Secretary of the terms of such alternative measures.
- (c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.

3 Any member of the Commission that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that member in accordance with paragraph 1(b) or on the date of the withdrawal of the objection whichever is the later.

4 The Executive Secretary shall promptly notify all members of the Commission of:

- (a) the receipt and withdrawal of each objection; and
- (b) the grounds for that objection and the alternative measures adopted, or proposed to be adopted, pursuant to paragraph 2.

5

- (a) When an objection is presented by a member of the Commission pursuant to paragraph 2, a Review Panel shall be established within 30 days after the end of the objection period. The Review Panel shall be established in accordance with the procedures in Annex II.
- (b) The Executive Secretary shall promptly notify all members of the Commission of the establishment of the Review Panel.
- (c) If two or more members of the Commission present objections based on the same grounds, those objections shall be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2.
- (d) If two or more members of the Commission present objections on different grounds, those objections may, with the consent of the members of the Commission concerned, be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2. In the absence of such consent, objections on different grounds shall be dealt with by separate Review Panels.
- (e) Within 45 days after its establishment, the Review Panel shall transmit to the Executive Secretary its findings and recommendations on whether the grounds specified for the objection presented by the member or members of the Commission are justified and whether the alternative measures adopted are equivalent in effect to the decision to which objection has been presented.
- (f) The Executive Secretary shall promptly notify all members of the Commission of the findings and recommendations of the Review Panel. The findings and recommendations of the Review Panel shall be dealt with and have effect as set out in Annex II.

6 Nothing in this Article limits the right of a member of the Commission at any time to refer a dispute concerning the interpretation or application of this Convention for binding settlement in accordance with the provisions of this Convention relating to the settlement of disputes.

**Article 18
TRANSPARENCY**

1 The Commission shall promote transparency in decision making processes and other activities carried out under this Convention.

2 All meetings of the Commission and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 unless otherwise decided by the Commission. The Commission shall publish its reports and conservation and management measures when adopted and shall maintain a public record of all reports and conservation and management measures in force in the Convention Area.

3 The Commission shall promote transparency in the implementation of this Convention through the public dissemination of non-commercially sensitive 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-Contracting Parties, relevant intergovernmental organisations and non-governmental organisations, including environmental organisations and fishing industry organisations with an interest in matters pertaining to the Commission 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. The rules of procedure of the Commission shall provide for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

**Article 19
RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING
STATES**

1 The Commission shall give full recognition to the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in relation to the conservation and management of fishery resources in the Convention Area and the sustainable use 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 members of the Commission shall take into account the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, in particular:

- (a) the vulnerability of such developing States and territories and possessions which are dependent on the exploitation of living marine 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 such developing States Parties, and territories and possessions; and
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing State Contracting Parties, and territories and possessions.

3 The members of the Commission shall cooperate either directly or through the Commission and other regional or sub-regional organisations to:

- (a) enhance the ability of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, to conserve and manage fishery resources and to develop their own fisheries for such resources;
- (b) assist developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, to enable them to participate in fishing for fishery resources, including facilitating access to such fishery resources consistent with Article 3 and Article 21; and
- (c) facilitate the participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in the work of the Commission and its subsidiary bodies.

4 Cooperation for the purposes set out in this Article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall, *inter alia*, be directed towards:

- (a) improved conservation and management of fishery resources through collection, reporting, verification, exchange and analysis of fisheries data and related information;
- (b) stock assessment and scientific research; and
- (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

5 The Commission shall establish a fund to facilitate the effective participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and, as appropriate, territories and possessions in the region, in the work of the Commission and its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

Article 20

CONSERVATION AND MANAGEMENT MEASURES

1 The conservation and management measures adopted by the Commission shall include measures to:

- (a) ensure the long-term sustainability of fishery resources and promote the objective of their responsible utilisation;
- (b) prevent or eliminate over fishing and excess fishing capacity to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (c) maintain or restore populations of non-target and associated or dependent species to above levels at which their reproduction may become seriously threatened; and
- (d) protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems.

2 The specific conservation and management measures adopted by the Commission shall, as appropriate, include the determination of:

- (a) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
- (b) the actions to be taken if those reference points are approached or exceeded;
- (c) the nature and extent of fishing for any fishery resource including the establishment of a total allowable catch or total allowable fishing effort;
- (d) the general or specific locations in which fishing may or may not occur;
- (e) the periods in which fishing may or may not occur;
- (f) the size limits in respect of the catch which may be retained; and
- (g) the types of fishing gear, fishing technology, or fishing practices which may be used when fishing.

3 In determining a total allowable catch or total allowable fishing effort for any fishery resource under paragraph 2 (c), the Commission shall take into account the following factors:

- (a) the status and stage of development of the fishery resource;
- (b) fishing patterns of the fishery resource;
- (c) catch of the same fishery resource within areas under national jurisdiction where relevant;
- (d) an allowance for discards and any other incidental mortality;
- (e) catch of non-target and associated or dependent species and impacts on the marine ecosystems in which the fishery resource occurs;
- (f) relevant ecological and biological factors limiting the nature of fishery resources that may be harvested;
- (g) relevant environmental factors, including trophic interactions which may have an effect upon the fishery resource and non-target and associated or dependent species; and
- (h) as appropriate, relevant conservation and management measures adopted by other intergovernmental organisations.

The Commission shall regularly review the total allowable catch or total allowable fishing effort established for any fishery resource.

4

- (a) For a fishery resource that straddles the Convention Area and an area under the national jurisdiction of a coastal State Contracting Party or Parties:
 - (i) the Commission shall establish a total allowable catch or total allowable fishing effort and other conservation and management measures, as appropriate, for the Convention Area. The Commission and the coastal State Contracting Party or Parties concerned shall cooperate in the coordination of their respective conservation and management measures in accordance with Article 4 of this Convention;
 - (ii) with the express consent of the coastal State Contracting Party or Parties concerned, the Commission may establish, in accordance with Annex III of this Convention, and as appropriate, a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource; and
 - (iii) in the case where one or more of the coastal State Contracting Parties does not consent to a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource, the Commission may establish, as appropriate, a total allowable catch or total allowable fishing effort that will apply in the areas of national jurisdiction of the consenting coastal State Contracting Party or Parties and the Convention Area. Annex III will apply, *mutatis mutandis*, to the establishment of this total allowable catch or total allowable fishing effort by the Commission.
- (b) In cases covered by subparagraph (a) (ii) or (a) (iii), other complementary conservation and management measures may be adopted so as to ensure sustainable conservation and management of the fishery resource throughout its range. To give effect to this paragraph, such measures may be adopted, in accordance with the principles of compatibility outlined in Article 4, by the Commission for the high seas and the coastal State Contracting Party or Parties concerned for the areas under national jurisdiction; and by the Commission, with the consent of the coastal State Contracting Party or Parties concerned, for measures that will apply throughout the range of the fishery resource.
- (c) All conservation and management measures, including a total allowable catch or total allowable fishing effort, adopted by the

Commission in accordance with subparagraphs (a) (ii), (a) (iii) and (b) are without prejudice to and do not affect the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction in accordance with international law, as reflected in the relevant provisions of the 1982 Convention and the 1995 Agreement, and do not in any other respect affect the Area of application of this Convention established by Article 5.

5

- (a) The Commission shall adopt measures to be applied on an emergency basis, in accordance with Article 16, including intersessionally, if necessary, where fishing presents a serious threat to the sustainability of fishery resources or the marine ecosystem in which these fishery resources occur or when a natural phenomenon or human caused disaster has, or is likely to have, a significant adverse impact on the status of fishery resources to ensure that fishing does not exacerbate such threat or adverse impact.
- (b) Measures taken on an emergency basis shall be based on the best scientific evidence available. Such measures shall be temporary and must be reconsidered for decision at the next meeting of the Commission following their adoption. The measures shall become binding on the members of the Commission in accordance with Article 17 paragraph 1. Such measures shall not be open to the objection procedure in Article 17 paragraph 2 but may be the subject of dispute settlement procedures under this Convention.

6 The conservation and management measures adopted by the Commission shall be progressively developed and integrated into management strategies or plans that set out the management objectives for each fishery resource, the reference points against which to measure progress in relation to those objectives, the indicators to be used in relation to those reference points and the measures to be taken in response to particular indicator levels.

Article 21

PARTICIPATION IN FISHING FOR FISHERY RESOURCES

1 When taking decisions regarding participation in fishing for any fishery resource, including the allocation of a total allowable catch or total allowable fishing effort, the Commission shall take into account the status

of the fishery resource and the existing level of fishing effort for that resource and the following criteria to the extent relevant:

- (a) historic catch and past and present fishing patterns and practices in the Convention Area;
- (b) compliance with the conservation and management measures under this Convention;
- (c) demonstrated capacity and willingness to exercise effective flag State control over fishing vessels;
- (d) contribution to the conservation and management of fishery resources, including the provision of accurate data and effective monitoring, control, surveillance and enforcement;
- (e) the fisheries development aspirations and interests of developing States in particular small island developing States and of territories and possessions in the region;
- (f) the interests of coastal States, and in particular developing coastal States and territories and possessions, in a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
- (g) the needs of coastal States and of territories and possessions whose economies are dependent mainly on the exploitation of and fishing for a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
- (h) the extent to which a member of the Commission is utilising the catch for domestic consumption and the importance of the catch to its food security;
- (i) contribution to the responsible development of new or exploratory fisheries in accordance with Article 22; and
- (j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.

2 When the Commission establishes a total allowable catch or total allowable fishing effort for any fishery resource pursuant to Article 20 paragraph 4 (a) (ii) or (iii), it may, with the express consent of the coastal State Contracting Party or Parties concerned, also take decisions regarding participation in fishing for that resource throughout its relevant range.

3 In taking decisions under paragraph 2, the Commission shall take into account the historic catch and past and present fishing patterns and

practices throughout the relevant range of the fishery resource concerned and the criteria listed in paragraph 1(b) – (j).

4 When the consent of the coastal State Contracting Party or Parties concerned is not provided pursuant to paragraph 2:

- (a) the Commission shall take decisions, in accordance with paragraph 1, regarding allocation of the portion of the total allowable catch or total allowable fishing effort established pursuant to Article 20 paragraph 4 (a) (i) that may be taken in the Convention Area; and
- (b) the Commission and the coastal State Contracting Party or Parties concerned shall cooperate in accordance with Article 4.

5 In taking decisions under this Article, the Commission may also have regard, as appropriate, to performance with respect to other international fisheries management regimes.

6 The Commission shall, when appropriate, review decisions regarding participation in fishing for fishery resources, including the allocation of a total allowable catch or total allowable fishing effort, taking into account the provisions of this Article and the interests of new Contracting Parties.

Article 22 NEW OR EXPLORATORY FISHERIES

1 A fishery that has not been subject to fishing or has not been subject to fishing with a particular gear type or technique for ten years or more shall be opened as a fishery or opened to fishing with such gear type or technique only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery, and, as appropriate, non-target and associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities.

2 Such preliminary conservation and management measures, which may include requirements regarding notification of intention to fish, the establishment of a development plan, mitigation measures to prevent adverse impacts on marine ecosystems, use of particular fishing gear, the presence of observers, the collection of data, and the conduct of research or exploratory fishing, shall be consistent with the objective and the conservation and management principles and approaches of this Convention. The measures shall ensure that the new fishery resource is developed on a precautionary and gradual basis until sufficient information

is acquired to enable the Commission to adopt appropriately detailed conservation and management measures.

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 the commencement of fishing for such new fisheries.

Article 23 **DATA COLLECTION, COMPILATION AND EXCHANGE**

1 To enhance the information base for the conservation and management of fishery resources, non-target and associated or dependent species and the protection of the marine ecosystems in which those resources occur; and to contribute to the elimination or reduction of IUU fishing and its negative impact on those resources, the Commission shall, taking full account of Annex I of the 1995 Agreement, develop standards, rules and procedures for, *inter alia*:

- (a) the collection, verification and timely reporting to the Commission of all relevant data by members of the Commission;
- (b) the compilation and management by the Commission of accurate and complete data to facilitate effective stock assessment and ensure that the provision of the best scientific advice is enabled;
- (c) the security of, access to and dissemination of data while maintaining confidentiality where appropriate;
- (d) the exchange of data among members of the Commission, and with other regional fisheries management organisations, and other relevant organisations including data concerning vessels engaged in IUU fishing, and, as appropriate, concerning the beneficial ownership of such vessels, with a view to consolidating such information into a centralised format for dissemination as appropriate;
- (e) the facilitation of coordinated documentation and data sharing between regional fisheries management organisations, including procedures to exchange data on vessel registers, catch documentation and trade tracking schemes where applicable; and
- (f) regular audits of Commission member compliance with data collection and exchange requirements, and for addressing any non-compliance identified in such audits.

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

Article 24
OBLIGATIONS OF MEMBERS OF THE COMMISSION

1 Each member of the Commission shall, in respect of its fishing activities within the Convention Area:

- (a) implement this Convention and any conservation and management measures adopted by the Commission, and take all necessary measures to ensure their effectiveness;
- (b) cooperate in furthering the objective of this Convention;
- (c) take all necessary measures to support efforts to prevent, deter and eliminate IUU fishing; and
- (d) collect, verify and report scientific, technical and statistical data pertaining to fishery resources and marine ecosystems in the Convention Area in conformity with the standards, rules and procedures established by the Commission.

2 Each member of the Commission 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. In the case of coastal State Contracting Parties, the report shall include information regarding the conservation and management measures they have taken for straddling fishery resources occurring in waters under their jurisdiction adjacent to the Convention Area in accordance with Article 20 paragraph 4 and Article 4. Such reports shall be made publicly available.

3 Without prejudice to the primacy of the responsibility of the flag State, to the greatest extent possible, each member of the Commission shall take measures and cooperate to ensure compliance by its nationals, or fishing vessels owned, operated or controlled by its nationals, with the provisions of this Convention and any conservation and management measures adopted by the Commission, and immediately investigate any alleged violation of such provisions and measures. Members of the Commission shall provide reports on the progress of the investigation to the Commission and relevant members of the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed.

4 To the extent permitted by its national laws and regulations, each member of the Commission shall establish arrangements for making available to prosecuting authorities of other members of the Commission evidence related to alleged violations of the provisions of the Convention and any conservation and management measures adopted by the Commission, including information available on the beneficial ownership of vessels flying its flag.

5 Each member of the Commission shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights recognised in this Convention in a manner which would not constitute an abuse of right.

Article 25 FLAG STATE DUTIES

1 Each member of the Commission shall take all necessary measures to ensure that fishing vessels flying its flag:

- (a) comply with the provisions of this Convention and the conservation and management measures adopted by the Commission and that such vessels do not engage in any activity which undermines the effectiveness of such measures when operating in the Convention Area;
- (b) do not conduct unauthorised fishing within waters under national jurisdiction adjacent to the Convention Area;
- (c) carry and operate equipment sufficient to comply with vessel monitoring system standards and procedures adopted by the Commission; and
- (d) land or tranship fishery resources caught in the Convention Area in accordance with standards and procedures adopted by the Commission.

2 No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Convention Area unless it has been authorised to do so by the appropriate authority or authorities of that member of the Commission.

3 Each member of the Commission shall:

- (a) authorise the use of fishing vessels flying its flag for fishing 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 register of fishing vessels entitled to fly its flag and authorised 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;
- (c) in accordance with measures adopted by the Commission, investigate immediately and report fully on actions taken in response to any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. Reporting shall include reports on the progress of the investigation to the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed;
- (d) ensure that penalties applicable for such violations are of an appropriate severity, taking into account relevant factors including the value of the catch, to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities; and
- (e) ensure in particular 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 Convention 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 Convention Area until it has complied with all outstanding sanctions imposed by the member of the Commission in respect of the violation.

4 Each member of the Commission is encouraged to ensure that fishing vessels flying its flag operate in the Convention Area in accordance with applicable international obligations, and with regard to relevant recommendations and guidelines, regarding safety at sea for vessels and their crews.

5 Each member of the Commission shall ensure that fishing vessels flying its flag engaged in or intending to engage in research into fishery resources comply with any procedures established by the Commission for the conduct of scientific research in the Convention Area.

Article 26

PORT STATE DUTIES

1 A port State Contracting Party has the right and duty 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 member of the Commission shall:

- (a) give effect to conservation and management measures adopted by the Commission in relation to the entry and use of its ports by fishing vessels that have engaged in fishing in the Convention Area including, *inter alia*, with respect to landing and transshipment of fishery resources, inspection of fishing vessels, documents, catch and gear on board, and use of port services; and
- (b) provide assistance to flag States, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Convention and with the conservation and management measures adopted by the Commission.

3 In the event that a member of the Commission considers that a fishing vessel making use of its ports has violated a provision of this Convention or a conservation and management measure adopted by the Commission, it shall notify the flag State concerned, the Commission and other relevant States and appropriate international organisations. The member of the Commission shall provide the flag State and, as appropriate the Commission with full documentation on the matter, including any record of inspection.

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

Article 27

MONITORING, COMPLIANCE AND ENFORCEMENT

1 The Commission shall establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing and to ensure compliance with this Convention and the conservation and management measures adopted by the Commission including, *inter alia*:

- (a) the establishment and maintenance of a Commission record of vessels authorised to fish in the Convention Area, 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 that shall be designed to ensure the integrity and security of near real time transmissions, including through the possibility of direct and simultaneous transmissions, to the Commission and flag State;

- (b) an inspection programme for Contracting Parties, both at sea and in port, including procedures for Contracting Parties to board and inspect each others' vessels in the Convention Area, and procedures for notification of inspection vessels and aircraft of Contracting Parties that may participate in the programme;
- (c) regulation and supervision of transshipment;
- (d) non discriminatory market-related measures, consistent with international law, to monitor transshipment, landings, and trade to prevent, deter and eliminate IUU fishing including, where appropriate, catch documentation schemes;
- (e) reporting on violations detected, progress and outcomes of investigations, and enforcement actions taken; and
- (f) addressing IUU fishing activities, including by identifying vessels engaging in IUU fishing activities, and by adopting appropriate measures to prevent, deter and eliminate IUU fishing, such as the development of an IUU vessels list, so that owners and operators of vessels engaging in such activities are deprived of the benefits accruing from those activities.

2 The Commission may adopt procedures that enable measures, including trade-related measures in relation to fishery resources, to be applied by members of the Commission to any state, member of the Commission, or entity whose fishing vessels engage in fishing activities that diminish the effectiveness of, or otherwise fail to comply with, the conservation and management measures adopted by the Commission. Such measures should include a range of possible responses so that account can be taken of the reason for and degree of non-compliance and should include, as appropriate, cooperative capacity-building initiatives. Any implementation of trade-related measures by a member of the Commission shall be consistent with that member's international obligations, including its obligations under the Agreement establishing the World Trade Organisation.

3 If, within three years of the entry into force of this Convention, the Commission has not adopted at sea inspection procedures as outlined in paragraph 1 (b), or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Convention to ensure compliance with the conservation and management measures adopted by the Commission, Articles 21 and 22 of the 1995 Agreement shall apply among Contracting

Parties as if those Articles were part of this Convention, and boarding and inspection of fishing vessels in the Area, as well as any subsequent enforcement action, shall be conducted in accordance with Articles 21 and 22 of the 1995 Agreement and such additional practical procedures as the Commission may decide are necessary for the implementation of those Articles.

Article 28 OBSERVER PROGRAMME

1 The Commission shall establish an observer programme, within three years of the entry into force of this Convention or such other period as the Commission may agree, to collect verified catch and effort data, other scientific data and additional information related to the fishing activity in the Convention Area, and its impacts on the marine environment. Information collected by the observer programme shall, as appropriate, also be used to support the functions of the Commission and its subsidiary bodies, including the Compliance and Technical Committee. The observer programme shall be coordinated by the Secretariat of the Commission, and shall be organised in a flexible manner which takes into account the nature of the fishery resources and other relevant factors. In this regard, the Commission may enter into contracts for the provision of the observer programme.

2 The observer programme shall consist of independent and impartial observers that are sourced from programmes or service providers accredited by the Commission. The programme shall be coordinated, to the maximum extent possible, with other regional, sub-regional and national observer programmes.

3 The Commission shall develop the observer programme taking into account advice from the Scientific Committee and Compliance and Technical Committee. The programme shall be operated in accordance with standards, rules and procedures developed by the Commission including, *inter alia*:

- (a) arrangements for the placing of observers by a member of the Commission on vessels flying the flag of another member of the Commission with the consent of that member;
- (b) levels of coverage appropriate for different fishery resources to monitor and verify catch, effort, catch composition and other details of fishing operations;
- (c) requirements for collection, validation and reporting of scientific data and information relevant to the implementation of the

provisions of this Convention and the conservation and management measures adopted by the Commission; and

- (d) requirements to ensure the safety and training of observers, for observer accommodation while on board the vessel, and to ensure observers have full access to and use of all relevant facilities and equipment on board the vessel in order to perform their duties effectively.

Article 29

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 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 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 30

REVIEWS

1 The Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this Convention and the consistency of such measures with the principles and approaches in Article 3. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years.

2 The Commission shall determine the terms of reference and methodology of such reviews which shall be carried out in accordance with criteria set by the Commission which shall be guided by best international practices and shall include contributions from the subsidiary bodies as appropriate and the participation of 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 Convention 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.

Article 31 **COOPERATION WITH OTHER ORGANISATIONS**

1 The Commission shall cooperate, as appropriate, with other regional fisheries management organisations, 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 the Convention Area, or in relation to areas adjacent to the Convention Area or in respect of particular living marine resources including non-target and associated or dependent 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. In particular it shall seek to cooperate with other relevant organisations with the aim of reducing and eventually eliminating IUU fishing.

Article 32 **NON-PARTIES**

1 Members of the Commission shall exchange information with respect to the activities of fishing vessels engaged in fishing in the Convention Area that are flying the flags of non-Contracting Parties to this Convention. Members of the Commission shall take measures, individually or collectively, 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 Convention Area, and shall report to the Commission any action taken in response to fishing in the Convention Area by non-Contracting Parties.

2 Taking account of Articles 116 to 119 of the 1982 Convention, the members of the Commission, individually or collectively, may draw the attention of any State or fishing entity which is a non-Contracting Party to

this Convention to any activity which in the opinion of the member or members of the Commission affects the implementation of the objective of this Convention.

3 Members of the Commission shall, individually or collectively, request non-Contracting Parties to this Convention whose vessels fish in the Convention Area to become party to this Convention or to agree to cooperate fully in the implementation of conservation and management measures adopted by the Commission.

4 Members of the Commission, individually or jointly, shall seek the cooperation of any non-Contracting Party that has been identified as a relevant port State or market State to ensure compliance with the objective of this Convention.

Article 33 RELATION TO OTHER AGREEMENTS

1 Nothing in this Convention shall prejudice the rights, jurisdiction and duties of Contracting Parties under relevant provisions of international law as reflected in the 1982 Convention or the 1995 Agreement.

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

Article 34 SETTLEMENT OF DISPUTES

1 Contracting Parties shall cooperate in order to prevent disputes and shall use their best endeavours to resolve any disputes by amicable means which may include, where a dispute is of a technical nature, referring the dispute to an ad hoc expert panel.

2 In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, *mutatis mutandis*, to any dispute between the Contracting Parties.

3 Paragraph 2 shall not affect the status of any Contracting Party in relation to the 1995 Agreement or the 1982 Convention.

Article 35
AMENDMENTS

1 The text of proposed amendments must be provided to the Executive Secretary at least 90 days in advance of a Commission meeting. The Executive Secretary shall promptly circulate a copy of this text to all members of the Commission.

2 Such proposals for amendment to this Convention shall be adopted by the Commission by a three-fourths majority of the Contracting Parties present and casting affirmative or negative votes. Adopted amendments shall be transmitted by the Depositary to all Contracting Parties without delay.

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 State, regional economic integration organisation, or other entity referred to in Article 1 paragraph 2 (b) that becomes a Contracting Party after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the Convention as amended once that amendment has entered into force in accordance with paragraph 3.

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.

Article 36
SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL

- 1 This Convention shall be open for signature by:
- (a) States, the regional economic integration organisation and the other entities referred to in Article 1, paragraph 2 (b), that

participated in the International Consultations on the Establishment of the South Pacific Regional Fisheries Management Organisation; and

- (b) any other State or any other entity referred to in Article 1, paragraph 2 (b), that has jurisdiction over waters adjacent to the Convention Area;

and shall remain open for signature for 12 months from the first day of February 2010.

2 This Convention is subject to ratification, acceptance or approval by the signatories.

3 Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 37 ACCESSION

1 This Convention shall be open for accession, after its closure for signature, by any State, regional economic integration organisation or other entity referred to in Article 36 paragraph 1, and by any other State or any other entity referred to in Article 1 paragraph 2 (b) having an interest in fishery resources.

2 Instruments of accession shall be deposited with the Depositary.

Article 38 ENTRY INTO FORCE

1 This Convention shall enter into force 30 days after the date of receipt by the Depositary of the eighth instrument of ratification, accession, acceptance or approval, which shall include ratification, accession, acceptance or approval by:

- (a) at least three coastal States adjacent to the Convention Area, which must include representation from both the side of the Convention Area that is east of Meridian 120° West and the side of the Convention Area that is west of Meridian 120° West; and
- (b) at least three States that are not coastal States adjacent to the Convention Area and whose fishing vessels are fishing in the Convention Area or have fished in the Convention Area.

2 If within three years of its adoption, this Convention has not entered into force in accordance with paragraph 1, it shall enter into force six months after the deposit of the tenth instrument of ratification, accession, acceptance or approval, or in accordance with paragraph 1, whichever is the earlier.

3 For each signatory which ratifies, accepts or approves this Convention after its entry into force, this Convention shall enter into force for that signatory 30 days after the deposit of its instrument of ratification, acceptance or approval.

4 For each State or regional economic integration organisation which accedes to this Convention after its entry into force, this Convention shall enter into force for that State or regional economic integration organisation 30 days after the deposit of its instrument of accession.

5 For the purposes of this Article, "fishing" includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).

Article 39 THE DEPOSITARY

1 The Government of New Zealand shall be the Depositary of this Convention and any amendments thereto. The Depositary 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 Depositary shall inform all signatories of and Contracting Parties to this Convention of signatures and of instruments of ratification, accession, acceptance or approval deposited under Article 36 or 37 and of the date of entry into force of the Convention and of any amendments thereto.

Article 40 PARTICIPATION BY TERRITORIES

1 The Commission and its subsidiary bodies shall be open to participation, with the appropriate authorisation of the Contracting Party having responsibility for its international affairs, to territories in the region that have an interest in fishery resources.

2 The nature and extent of participation by territories shall be provided for by the Contracting Parties in separate rules of procedure of the

Commission, taking into account international law, the distribution of competence on matters covered by this Convention and the evolution in the capacity of such territory to exercise rights and responsibilities under this Convention. These rules of procedure shall provide territories with the right to participate fully in the work of the Commission and its subsidiary bodies, except for the right to vote or block consensus on decisions, advice or recommendations.

3 Notwithstanding paragraph 2, all such territories shall be entitled to be present and to speak at the meetings of the Commission and its subsidiary bodies. In the performance of its functions, and in taking decisions, the Commission shall take into account the interests of all participants.

Article 41 WITHDRAWAL

1 A Contracting Party may, by written notification addressed to the Depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect 1 year after the date of receipt of the notification, unless the notification specifies a later date.

2 Withdrawal from this Convention by a Contracting Party shall not affect the financial obligations of such Contracting Party incurred prior to its withdrawal becoming effective.

3 Withdrawal from this Convention by a Contracting Party shall not in any way affect the duty of such Contracting Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 42 TERMINATION

This Convention shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below 4.

Article 43 RESERVATIONS

No reservations or exceptions may be made to this Convention.

Article 44
DECLARATIONS AND STATEMENTS

Article 43 does not preclude a State, regional economic integration organisation or entity referred to in Article 1 paragraph 2 (b), when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonisation of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State, regional economic integration organisation or entity.

Article 45
ANNEXES

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Annexes relating thereto.

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

DONE at Auckland the fourteenth day of November, two thousand and nine, in a single original.

OPENED FOR SIGNATURE at Wellington this first day of February, two thousand and ten.

Australia:

Annex I

**PARTS OF THE CONVENTION AREA FOR WHICH THE EASTERN
AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES HAVE
RESPONSIBILITIES**

1 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 Convention Area that lies east of Meridian 120° West.

2 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 Convention Area that lies west of Meridian 120° West.

Annex II**REVIEW PANEL****Establishment**

1 A Review Panel to be established in accordance with Article 17 paragraph 5 shall be constituted as follows:

- (a) It shall consist of three members appointed from the list of experts in the field of fisheries drawn up and maintained by the FAO pursuant to Annex VIII, Article 2 of the 1982 Convention or a similar list maintained by the Executive Secretary. The list maintained by the Executive Secretary shall be made up from experts whose competence in the legal, scientific or technical aspects of fisheries covered by this Convention is established and generally recognised and who enjoy the highest reputation for fairness and integrity. Each member of the Commission shall be entitled to nominate up to five experts and shall provide information on relevant qualifications and experience of each of its nominees.
- (b) The Chairperson of the Commission and the member of the Commission that has presented objection to the decision shall each appoint one member. The name of the member appointed by the objecting member of the Commission shall be included in the notification of the objection to the Executive Secretary pursuant to Article 17 paragraph 2 (a). The name of the member appointed by the Chairperson of the Commission shall be notified to the objecting member of the Commission within 10 days of the expiry of the objection period.
- (c) The third member shall be appointed within 20 days of the expiry of the objection period through agreement between the objecting member of the Commission and the Chairperson of the Commission and shall not be a national of the objecting member of the Commission. If there is no agreement within this time period on the appointment of the third member, the appointment shall be made by the Secretary General of the Permanent Court of Arbitration, unless it is agreed that the appointment be made by another person or third State.
- (d) The Review Panel is considered to be established on the date that the third member is appointed, and this third member shall chair the Review Panel.

2 If more than one member of the Commission presents an objection to the decision on the same grounds, or where there is agreement pursuant to Article 17 paragraph 5 (d) that objections to the decision made on different grounds may be dealt with by the same Review Panel, the Review Panel shall consist of 5 members from the lists referred to in paragraph 1 (a) and shall be constituted as follows:

- (a) One member shall be appointed, in accordance with paragraph 1 (b) by the member of the Commission that presented the first objection, two members shall be appointed by the Chairperson of the Commission within 10 days of the expiry of the objection period, one member shall be appointed by agreement between the subsequent objecting members of the Commission within 15 days of the expiry of the objection period and one member shall be appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission within 20 days of the expiry of the objection period. If within the latter two time periods as appropriate, agreement cannot be reached on either of the last two appointments, the appointment or appointments on which agreement has not been reached shall be made by the Secretary General of the Permanent Court of Arbitration unless there is agreement that the appointment or appointments be made by another person or third State.
- (b) The Review Panel is considered to be established on the date that the final member is appointed. The Review Panel shall be chaired by the member appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission in accordance with subparagraph (a).

3 Any vacancy on a Review Panel shall be filled in the manner described for the initial appointment.

Functioning

4 The Review Panel shall determine its own rules of procedure.

5 A hearing shall be convened at a place and on a date to be determined by the Review Panel within 30 days following its establishment.

6 Any member of the Commission may submit a memorandum to the Review Panel concerning the objection under review and the Panel shall allow any such member of the Commission full opportunity to be heard.

7 Unless the Review Panel decides otherwise because of the particular circumstances of the case, the expenses of the Review Panel, including the remuneration of its members, shall be borne as follows:

- (a) 70 per cent shall be borne by the objecting member of the Commission, or if there is more than one objecting member of the Commission, divided equally amongst them; and
- (b) 30 per cent shall be borne by the Commission from its annual budget.

8 The findings and recommendations of the Review Panel shall be adopted by a majority of its members. Any member of the Panel may attach a separate or dissenting opinion. Any decisions on the procedure of the Review Panel shall also be taken by a majority of its members.

9 The Review Panel shall, within 45 days of its establishment, transmit its findings and recommendations to the Executive Secretary in accordance with Article 17 paragraph 5.

Findings and Recommendations

10 The findings and recommendations of the Review Panel shall be dealt with as follows:

Findings of Discrimination

- (a) If the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures have equivalent effect to the decision to which objection has been presented, the alternative measures shall be deemed to be equivalent to the decision and to be binding on the relevant member or members of the Commission in substitution for the decision.
- (b) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures are equivalent in effect to the decision to which objection has been presented, subject to specific modifications, the Review Panel will recommend such modifications. On receipt of the findings and recommendations of the Review Panel the objecting member or members of the Commission shall, within 60 days, modify the relevant alternative measures as recommended by

the Review Panel or institute dispute settlement proceedings under this Convention. The alternative measures shall be deemed to be equivalent to the decision to which an objection has been presented when they are modified as recommended by the Review Panel. Such alternative measures shall then be binding on the relevant member or members of the Commission in the modified form in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor the modified alternative measures shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (c) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented unjustifiably discriminates in form or in fact against the objecting member or members of the Commission but the alternative measures do not have equivalent effect to the decision to which objection has been presented the objecting member or members of the Commission shall, within 60 days, adopt measures recommended by the Review Panel as equivalent in effect to the decision to which objection has been presented or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission adopt the measures recommended by the Review Panel these measures shall be deemed to be binding on the objecting member or members of the Commission in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor any measures recommended by the Review Panel shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.
- (d) Where the Review Panel makes findings and recommendations under subparagraphs (b) or (c) the objecting member or members of the Commission may within 30 days from the date of the transmittal of the notification of those findings and recommendations request an extraordinary meeting of the Commission. The Extraordinary Meeting shall be convened by the Chairperson within 45 days of the receipt of any such request.
- (e) If the Extraordinary Meeting convened under subparagraph (d) confirms or modifies the recommendations of the Review Panel, the 60 day period under subparagraphs (b) or (c) as

appropriate, for the implementation of those findings and recommendations in original or modified form or the institution of dispute settlement proceedings, shall run from the date of the transmittal of the decision of the Extraordinary Meeting. If the Extraordinary Meeting of the Commission decides not to confirm or modify the recommendations of the Review Panel but to revoke the decision to which objection was presented and replace it with a new decision or a modified version of the original decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.

Findings of Inconsistency

- (f) If the Review Panel finds that the decision to which objection has been presented is inconsistent with this Convention, or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement, an Extraordinary Meeting of the Commission shall be convened by the Chairperson within 45 days of the notification of the Review Panel's findings and recommendations to reconsider the decision in the light of those findings and recommendations.
- (g) If the Extraordinary Meeting of the Commission revokes the decision to which objection has been presented and replaces it with a new decision, or a modified version of the previous decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.
- (h) If the Extraordinary Meeting of the Commission confirms its original decision, the objecting member or members of the Commission shall, within 45 days, implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention, the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

Findings of Non-justification of Objection

- (i) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant

international law as reflected in the 1982 Convention or the 1995 Agreement, the objecting member or members of the Commission shall, subject to subparagraph (j), within 45 days implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (j) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement but that the alternative measures are equivalent in effect to the decision and should be accepted as such by the Commission, the alternative measures shall be binding on the objecting member or members of the Commission in substitution for the decision pending confirmation of their acceptance by the Commission at its next meeting.

Annex III**PROCEDURES FOR THE ESTABLISHMENT AND IMPLEMENTATION
OF A TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING
EFFORT FOR A STRADDLING FISHERY RESOURCE WHEN APPLIED
THROUGHOUT ITS RANGE**

1 In accordance with Articles 23 and 24, coastal State Contracting Parties and members of the Commission whose vessels fish for the straddling fishery resource in areas under national jurisdiction or on the high seas in the adjacent Convention Area shall provide all relevant scientific, technical and statistical data with respect to such fishery resources to the Commission for consideration by the Scientific Committee and, as appropriate, the Compliance and Technical Committee.

2 In accordance with Article 10, the Scientific Committee shall assess the status of the straddling fishery resource throughout its range and provide advice to the Commission and the relevant Sub-regional Management Committee on an appropriate total allowable catch or total allowable fishing effort for the resource throughout its range. Such advice should include where possible estimates of the extent to which the establishment of a total allowable catch or a total allowable fishing effort at different levels would achieve the objective or objectives of any management strategy or plan adopted by the Commission.

3 In accordance with Article 12, and on the basis of the advice of the Scientific Committee and any relevant advice of the Compliance and Technical Committee, the relevant Sub-regional Management Committee shall make recommendations to the Commission on a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and appropriate measures to ensure the total allowable catch or total allowable fishing effort is not exceeded.

4 In accordance with Articles 16 and 20, the Commission, on the basis of the recommendations and advice from the Scientific Committee and the relevant Sub-regional Management Committee and any relevant advice of the Compliance and Technical Committee, shall establish a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded.

5 In relation to the conservation and management of *Trachurus murphyi* (jack mackerel), the Commission shall, in accordance with Article 20, and as appropriate, give primary consideration to establishing a total allowable catch, without prejudice to any other conservation and

management measures which it considers appropriate to adopt to ensure the conservation and sustainable use of this fishery resource.

Annex IV
FISHING ENTITIES

1 After the entry into force of this Convention, any fishing entity whose vessels have fished or intend to fish for fishery resources may, by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant to it. Such commitment shall become effective 30 days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Depositary. The withdrawal shall become effective 1 year after the date of its receipt, unless the notification specifies a later date.

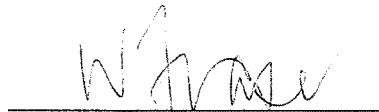
2 Any fishing entity referred to in paragraph 1 above may by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of the Convention as it may be amended pursuant to Article 35(3). This commitment shall be effective from the dates referred to in Article 35(3) or on the date of receipt of the written communication referred to in this paragraph, whichever is later.

3 A fishing entity which has expressed its firm commitment to abide by the terms of this Convention and comply with conservation and management measures adopted pursuant to it in accordance with paragraph 1 must abide by the obligations of members of the Commission, and may participate in the work, including decision making, of the Commission in accordance with the provisions of this Convention. For the purposes of this Convention, references to the Commission or members of the Commission include such fishing entity.

4 If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Convention in accordance with this Annex 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.

5 The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.

I, Warren David Fraser, Acting Director, Legal Division, New Zealand Ministry of Foreign Affairs and Trade, hereby certify that the attached is a true and correct copy of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (excluding signature pages) done at Auckland on 14 November 2009 and as rectified by Procès Verbal dated 1 April 2010.



Dated 24 June 2010