

**DRAFT****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* the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995 and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 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 as reflected in the relevant provisions of the above Agreements, States have a duty to co-operate with each other in the conservation and management of living resources in the areas of the high seas and, as appropriate, to co-operate to establish sub-regional or regional fisheries organisations or arrangements with a view to taking the measures necessary for the conservation of such resources;

*Taking into consideration* that, under international law as 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 minimize the risk of long-term or irreversible effects of fishing;

*Mindful* that effective conservation and management measures must be based on the best scientific advice 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**

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) 'Convention Area' means the area to which this convention applies in accordance with Article 5;
- (d) 'Code of Conduct' means the Code of Conduct for Responsible Fisheries adopted by the 28<sup>th</sup> session of the Conference of the Food and Agriculture Organisation of the United Nations (FAO) on 31 October 1995;
- (e) '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;
- (f) 'fishery resources' means fish, molluscs, crustaceans and other sedentary species within the Convention Area, but excluding:
  - (i) sedentary species subject to the national jurisdiction of coastal States pursuant to Article 77(4) of the 1982 Convention; and
  - (ii) highly migratory species listed in Annex I of the 1982 Convention;
  - (iii) anadromous and catadromous species;
- (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) any operation at sea in support of, or in preparation for, any activity described in this definition, including transshipment;
  - (iv) the use of any other vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
- (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) 'living marine resources' means all living components of the marine ecosystems, including seabirds;
- (l) 'market State' means a State or regional economic integration organisation which imports, exports, re-exports or has a domestic market for fishery resources or fishery resource products derived from fishing in the Convention Area;
- (m) 'nationals' includes both natural and legal persons;
- (n) 'port State' means any State receiving fishing vessels in their ports including port offshore terminals and other installations for, inter alia, landing, transshipping, refuelling or re-supplying;
- (o) '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;
- (p) 'serious violation' has the same meaning as that set out in Article 21(11) of the 1995 Agreement;
- (q) 'transshipment' 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.

**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 Articles 6(2) and 9(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 full account of international best practice;
  - (ii) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on associated and 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 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) co-operation and co-ordination 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 small island developing States, and of territories and possessions, and the needs of developing State coastal communities, shall be taken into account, in accordance with the 1995 Agreement;

- (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;
  - (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 shall:
- (i) be more cautious when information is uncertain, unreliable, or inadequate;
  - (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures;
  - (iii) take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the Code of Conduct.
- (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. This convention applies to the Area ...

[see paragraph 4 of *Report of the First International Meeting on the Establishment of the proposed SPRFMO, February 14-17, 2006*, which records that

“the meeting discussed an indicative outline of high seas area for the proposed RFMO (refer Annex II of SP/01/Inf3rev1) as follows:

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

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

2. Where for the purpose of this 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).

3. 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 Committee;
- (d) an Eastern Sub-regional Management Committee;
- (e) a Western Sub-regional Management Committee;
- (f) a Secretariat,

and any other subsidiary bodies and sub-committees that the Commission may, from time to time, establish in accordance with Article 9(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 at.....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, 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.
5. The Commission shall, at a meeting by consensus, adopt and amend as necessary its rules of procedure. Such rules may include procedures for taking and recording decisions intersessionally.

### **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;
- (b) determine the nature and extent of participation in fishing for fishery resources;
- (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 scientific purposes in the Convention Area;

- (e) co-operate and exchange data with relevant organisations and coastal States, territories and possessions and promote compatibility of adjacent areas;
- (f) develop and establish effective monitoring, control, surveillance, compliance and enforcement procedures, including non-discriminatory market-related and trade-related measures;
- (g) 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;
- (h) adopt proposals for measures to prevent, deter and eliminate IUU fishing;
- (i) develop rules for cooperating non-contracting party status under this Convention including rules relating to any participation by co-operating non-contracting parties in fishing for fishery resources, their financial contributions to the organisation and their attendance at meetings as observers.
- (j) 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;
- (k) supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;
- (l) guide the Commission's subsidiary bodies in their work;
- (m) adopt the budget of the Organisation;
- (n) adopt and amend as necessary its rules of procedure, financial regulations and any other regulations necessary for the exercise of its functions
- (o) 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 Committee, the Eastern Sub-regional Management Committee and the Western Sub-regional Management 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 Contracting Party 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 co-operation 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) precautionary reference points for fishery resources,
  - (ii) management strategies or plans for fishery resources based on such reference points and
  - (iii) analysis of the probability of achieving the objective of any management strategy or plan at different levels of total allowable catch or total allowable fishing effort;
- (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 co-operation 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 fisheries resources straddling the Convention Area and areas under national jurisdiction;
- (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 shall make appropriate arrangements for the periodic independent peer review of the Scientific Committee's reports, advice and recommendations.

#### **Article 11 COMPLIANCE COMMITTEE**

1. Each Contracting Party shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives and advisers.
2. The functions of the Compliance Committee shall be to:
  - (a) monitor and review the implementation of, and compliance with, conservation and management measures adopted under this convention or under consideration by the Commission, and provide advice and recommendations to the Commission;
  - (b) provide such other advice and recommendations relating to compliance with, and enforcement of, this convention as it considers appropriate or as may be requested by the Commission;
  - (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 functions of the Eastern and Western Sub-regional Management Committees shall be to develop and make recommendations to the Commission on conservation and management measures, in accordance with Article 19, and on participation in fishing for fishery resources, in accordance with Article 20, 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 on the matters on which such consent is required under Article 19(5). Where appropriate the Committees shall make all efforts to coordinate their recommendations.
2. The Commission may amend Annex I at any time in accordance with Article 45 to adjust the geographic coordinates it contains.
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 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) Contracting Parties situated adjacent to the part of the Convention Area for which a Committee has responsibility in accordance with this article, or whose fishing vessels are currently fishing in that area or have fished in that area within the past two years, shall be members of that Committee.
  - (b) Any Contracting Party that is not a member of a Committee may send a representative to participate in the work of that Committee.
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. Where a Sub-regional Management Committee has made recommendations under this Article, the Commission shall adopt conservation and management measures in accordance with Article 19 and decisions on participation in fishing for fishery resources in accordance with Article 20 on the basis of those recommendations. The Commission may request a Sub-regional Management Committee to recommend conservation and management measures, including for a specific fishery resource or associated and dependent species, within a specified reasonable time.

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 SECRETARIAT**

1. The Secretariat shall perform the functions delegated to it by the Commission.
2. The chief administrative officer of the Secretariat shall be the Executive Secretary, who shall be appointed by the Commission according to such procedures and on such terms as it may determine.
3. Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such 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 Commission shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions and more specifically the availability of services under contractual arrangement.

### **Article 14 BUDGET**

1. The Contracting Parties, at their 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 Contracting Parties and the formula for calculating such contributions, shall be taken by consensus.
2. Each Contracting Party shall contribute to the budget. The amount of the annual contributions due from each Contracting Party 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 Contracting Parties whose only catch in the Convention Area is that of its 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 Contracting Party together with a schedule of contributions, not less than 60 days before the annual meeting of the Commission at which the budget is to be considered. In preparing the draft budget the Secretariat shall take full account of the need for cost effectiveness together with the guidance of the Commission as to the meetings of the subsidiary bodies that may be required in the budget year. 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 Contracting Party of its contribution due as calculated under the formula adopted by the Commission pursuant to paragraph 2 and as soon as possible thereafter each Contracting Party 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 acceding to this Convention during the course of a financial year shall contribute in respect of that year a part of the contribution calculated in accordance with the provisions of this article that is proportional to the number of complete months remaining in the year.

9. Unless otherwise decided by the Commission, a Contracting Party 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, including the formula for contributions referred to in paragraph 2, 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 15  
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 Contracting Parties present and casting positive or negative votes; and
  - (b) decisions on questions of substance shall be taken by a two-thirds majority of the Contracting Parties present and 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 16****IMPLEMENTATION OF COMMISSION DECISIONS**

1. Decisions on questions of substance adopted by the Commission shall become binding on the Contracting Parties in the following manner:
  - (a) The Executive Secretary shall promptly notify each decision to all Contracting Parties;
  - (b) Subject to paragraph 2, the decision shall become binding upon all Contracting Parties 90 days after the date of transmittal specified in the notification pursuant to subparagraph (a) (the date of notification).
2. (a) Any Contracting Party 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 Contracting Party to the extent of the objection, except in accordance with paragraph 3 and Annex II.
  - (b) A Contracting Party 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 Contracting Party, or is inconsistent with the provisions of this convention, the 1982 Convention or the 1995 Agreement.
3. Any Contracting Party that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that Party 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 Contracting Parties of:
- (a) the receipt and withdrawal of each objection;
  - (b) the grounds for that objection and the alternative measures adopted, or proposed be adopted, pursuant to Paragraph 2.
5. (a) When an objection is presented by a Contracting Party 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 Contracting Parties of the establishment of the Review Panel.
- (c) If two or more Contracting Parties 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 Contracting Parties present objections on different grounds, those objections may, with the consent of the Contracting Parties 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 Contracting Party or Parties 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 Contracting Parties 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 Contracting Party to refer a dispute concerning the interpretation or application of this Convention for binding settlement in accordance with Article 35(3) at any time.

### **Article 17 TRANSPARENCY**

1. The Contracting Parties 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 registered participants and observers 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-confidential information and, as appropriate, facilitating consultations with, and the participation of, non-governmental organisations, representatives of the fishing industry, particularly the fishing fleet, and other interested bodies and individuals.
4. Representatives of non-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 18 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 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 Contracting Parties shall take into account the special requirements of developing state Contracting Parties in the region, in particular small island developing States, and territories and possessions, in particular:

- (a) the vulnerability of 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 developing States Parties, particularly small island developing States Parties, and territories and possessions;
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions.

3. The Contracting Parties 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 territories and possessions, 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, to enable them to participate in fishing for fishery resources, including facilitating access to such fishery resources subject to the provisions of this Convention;
- (c) facilitate the participation of developing state Contracting Parties in the region, and of territories and possessions, in the work of the Commission and its subsidiary bodies.

4. Co-operation with developing state Contracting Parties and territories and possessions, 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, particularly small island developing States, and, as appropriate, territories and possessions, 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 19** **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 associated and dependent species to above levels at which their reproduction may become seriously threatened;
- (d) protect the habitats and marine ecosystems in which fishery resources and associated and dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where substantial uncertainty exists as to the presence of vulnerable marine ecosystems or the impacts of particular fishing activities on such ecosystems.

2. The specific conservation and management measures adopted by the Commission may include the determination of:

- (a) precautionary reference points;
- (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 occur;
- (e) the periods in which fishing may occur;
- (f) the size limits in respect of the catch which may be retained;
- (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) of this article, 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 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 associated or dependent species;
- (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 an area under the national jurisdiction of a coastal State Contracting Party or Parties and the adjacent high seas of the Convention Area:
- (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;
  - (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 adjacent high seas of 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 (a)(ii) or (a)(iii) of this paragraph, 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 their exclusive economic zones; 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) of this paragraph 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 15, including intersessionally, if necessary, where fishing presents a serious threat to the sustainability of fishery resources or the marine ecosystem in which these fisheries 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 at the next meeting of the Commission following their adoption. The measures shall become binding on the Contracting Parties in accordance with Article 16 paragraph 1. They shall not be open to the objection procedure in Article 16 paragraph 2 but may be the subject of dispute settlement procedures under Article 35.
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 20**  
**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:

- (a) historic catch and past and present fishing patterns and practices, either throughout the relevant range of a fishery resource when the Commission establishes a total allowable catch or total allowable fishing effort for that resource under Article 19(4)(a)(ii) or (iii), or in the Convention Area when the Commission establishes a total allowable catch or total allowable fishing effort in accordance with Article 19(4)(a)(i);
- (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 interests of developing States in particular small island developing States and of territories and possessions in whose areas of national jurisdiction the same fishery resource also occurs;
- (f) the needs of coastal States and of territories and possessions whose economies are overwhelmingly dependent on the exploitation of fishery resources;
- (g) the needs of coastal fishing communities which are dependent mainly on fishing for the fishery resource;
- (h) the extent to which a Contracting Party 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 fisheries in accordance with 21;
- (j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.

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

3. The Commission shall regularly 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 matters listed in paragraph 1 and the interests of new Contracting Parties.

#### **Article 21**

#### **DEVELOPMENT OF NEW FISHERY RESOURCES**

1. A fishery resource that is not subject to fishing at the time of the entry into force of this Convention shall be subject to fishing only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery resource, and any associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery resource 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, specification of fishing gear, the presence of observers, the collection of data, and the conduct of research, 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 fishery resources prior to the commencement of fishing for such new fishery resources.

**Article 22**  
**DATA COLLECTION, COMPILATION AND EXCHANGE**

1. To enhance the information base for the conservation and management of fishery resources, associated and 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 of all relevant data by Contracting Parties;
- (b) the compilation and management 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 and dissemination of data while maintaining confidentiality where appropriate;
- (d) the exchange of data between Contracting Parties, other regional fisheries management organisations, and other relevant organisations concerning vessels engaged in IUU fishing, including the beneficial ownership of such vessels, with a view to consolidating such information into a centralised format for dissemination as appropriate;
- (e) the facilitation of co-ordinated documentation and data-sharing between regional fisheries management organisations, including procedures to exchange data on vessel registers, catch documentation schemes where applicable, and analysis of trade flows;
- (f) regular audits of Contracting Party 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 organisations.

**Article 23**  
**CONTRACTING PARTY DUTIES**

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

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

- (c) take all necessary measures in order to ensure the effectiveness of the conservation and management measures adopted by the Commission;
- (d) take all necessary measures to support efforts to prevent, deter and eliminate IUU fishing;
- (e) 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 Contracting Party shall report to the Commission on an annual basis indicating how it has implemented the conservation and management measures and compliance and enforcement procedures adopted by the Commission, including as appropriate in respect of its fishing vessels, ports, markets, industries and nationals operating on fishing vessels and including the outcome of any actions under paragraph 3. In the case of coastal States that are Contracting Parties to this Convention, the report shall include information regarding the conservation and management measures they have taken for straddling fishery resources occurring in waters under their jurisdiction adjacent to the Convention Area in accordance with Article 19(4) and Article 4. Such reports shall be made publicly available.

3. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, subject to its national law, immediately investigate any alleged violation by its nationals, or fishing vessels owned, operated or controlled by its nationals, of the provisions of this Convention or any conservation and management measure adopted by the Commission, including on the basis of relevant information communicated by any other Contracting Party. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the Commission and the Contracting Party communicating the relevant information as soon as practicable and in any case within two months of the receipt of the relevant information. A report on the outcome of the investigation shall be provided when the investigation is completed.

4. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, to the greatest extent possible, take action, or cooperate, to ensure that its nationals, fishing vessels owned, operated or controlled by its nationals fishing in the Convention Area and its industries comply with the provisions of this Convention and with the conservation and management measures adopted by the Commission.

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

**Article 24**  
**FLAG STATE DUTIES**

1. Each flag State Contracting Party shall take such measures as may be necessary to ensure that:
  - (a) fishing vessels flying its flag operating in the Convention Area 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;
  - (b) fishing vessels flying its flag do not conduct unauthorized fishing within waters under national jurisdiction adjacent to the Convention Area;
  - (c) it develops and implements a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Convention Area in accordance with standards and procedures adopted by the Commission;
  - (d) fishing vessels flying its flag:
    - (i) land or tranship in port fishery resources caught in the Convention Area only at ports at which it has systems for inspecting documents, fishing gear and catch on board those fishing vessels, that enable verification that the catch on board has been caught in a manner consistent with the conservation and management measures adopted by the Commission and/or where appropriate has been transhipped in accordance with relevant procedures adopted by the Commission; and
    - (ii) tranship at sea only when there is full observer coverage and the transhipment is done in accordance with relevant procedures adopted by the Commission.
2. No flag State Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Convention Area unless it has been authorised to do so by the appropriate authority or authorities of that flag State Contracting Party.
3. Each flag State Contracting Party 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 authorized to fish for fishery resources, and ensure that, for all such vessels, such information as may be specified by the Commission is entered in that register. Contracting Parties shall exchange this information in accordance with such procedures as may be agreed by the Commission;

- (c) in conformity with conservation and management measures adopted by the Commission, make available to each annual Commission meeting a report on its fishing in the Convention Area;
  - (d) 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;
  - (e) ensure that penalties applicable for such violations are of an appropriate severity, taking into account the value of the catch, to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities
  - (f) 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 such time as it has complied with all outstanding sanctions imposed by the flag State Contracting Party in respect of the violation;
  - (g) to the extent permitted by its national laws and regulations, establish arrangements for making available to prosecuting authorities of other Contracting Parties evidence related to alleged violations, including information available on the beneficial ownership of vessels flying its flag.
4. Each flag State Contracting Party 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 25**

#### **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 port State Contracting Party shall:
- (a) in accordance with the conservation and management measures adopted by the Commission, *inter alia*, inspect documents, fishing gear and catch on

board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals;

- (b) in accordance with the conservation and management measures adopted by the Commission, not permit landings, transshipment, or supply services in relation to fishing vessels that have engaged in fishing in the Convention Area unless it is satisfied, having regard, *inter alia*, to any information provided by the flag state and the vessels concerned, that catch on board such vessels has been caught in a manner consistent with the conservation and management measures adopted by the Commission;
- (c) provide assistance to flag State Contracting Parties, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports or at its offshore terminals and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Convention and with the conservation and management measures adopted by the Commission.

3. In the event that a port State Contracting Party considers that a fishing vessel making use of its ports or offshore terminals has violated a provision of this Convention or a conservation and management measure adopted by the Commission, it shall draw this to the attention of the flag State concerned and the Commission. The port State Contracting Party 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 26** **MARKET- RELATED MEASURES**

1. The Commission shall establish appropriate non-discriminatory market-related measures to monitor landings, trade and transport flows from the catch to the market, including where necessary:

- (a) catch documentation schemes and/or other catch or trade tracking schemes; and
- (b) mechanisms to exchange and verify data in a timely manner.

2. The Commission shall, at its first or second meeting, examine the need for catch documentation or other catch or trade tracking schemes in respect of each fishery resource. The need for such schemes shall be kept under regular review and the operation of any such schemes shall be monitored to ensure that any gaps in their coverage and implementation are addressed.

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

or products derived from such resources and thereby facilitate the identification of any such fishery resources or products derived from such resources not caught in a manner consistent with the conservation and management measures adopted by the Commission.

**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.
2. The Commission shall adopt procedures for, *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;
  - (b) an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels on the high seas, and procedures for notification of inspection vessels and aircraft that may participate in the programme all of which shall be clearly marked and identifiable as being on government service and authorised to undertake high seas boarding and inspection in accordance with this Convention;
  - (c) regulation and supervision of transshipment;
  - (d) the reporting on infringements detected, progress and outcomes of investigations, and enforcement actions taken; and
  - (e) addressing IUU fishing activities in the Convention Area, including by identifying vessels engaging in IUU fishing activities, by adopting appropriate measures to prevent, deter and eliminate IUU fishing such as the development of an IUU vessels list, and by ensuring that owners and operators of vessels engaging in such activities are deprived of the benefits accruing from those activities.
3. The Commission may adopt procedures that enable measures, including trade-related measures in relation to fishery resources, to be applied by Contracting Parties to any state 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 Contracting Party shall be consistent with that Party's international obligations, including its obligations under the WTO Agreement, and to that end shall not be applied by that Party in a manner that would constitute a means of arbitrary or unjustifiable discrimination between States where the same conditions prevail, or as a disguised restriction on international trade.

4. If, within two years of the entry into force of this Convention, the Commission has not adopted at sea inspection procedures as outlined in paragraph 2(b) above, or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Convention to ensure compliance with the conservation and management measures adopted by the Commission, it shall apply the procedures for boarding and inspection as stipulated in Articles 22 and 23 of the 1995 Agreement, in order to strengthen the effective discharge by Contracting Parties of their obligations under this Convention and where applicable, under the 1995 Agreement.

### **Article 28** **OBSERVER PROGRAMME**

1. The Commission shall establish an observer programme, within two years of the entry into force of this Convention, to collect verified catch and effort data, other scientific data and additional information related to the fishery resources of the Convention Area, and to monitor the implementation of the provisions of this Convention and the conservation and management measures adopted by the Commission. 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 authorised by the Secretariat of the Commission. The programme shall be coordinated, to the maximum extent possible, with other regional, sub-regional and national observer programmes.

3. In developing the observer programme, the Commission shall take into account advice from the Scientific Committee and Compliance Committee and shall ensure that the programme is operated in accordance with standards, rules and procedures developed by the Commission. These standards, rules and procedures shall include *inter alia*:

- (a) arrangements for the placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party with the consent of that Party;
- (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 information;
- (d) requirements for reporting of findings from the monitoring of the implementation of the provisions of this convention and the conservation and management measures adopted by the Commission;
- (e) requirements to ensure the safety of observers;
- (f) requirements for training of observers; and
- (g) requirements in relation to electronic monitoring mechanisms.

**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 Food and Agriculture Organisation of the United Nations.

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 Food and Agriculture Organisation of the United Nations.

**Article 30**  
**REVIEWS**

1. The Commission shall organise regular reviews of the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this 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 international best practice 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 36.

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 Food and Agriculture Organisation of the United Nations, 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 living marine resources not covered by this Convention, including dependent or associated species, and that have objectives that are consistent with, and supportive of, the objective of this convention. It shall endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures or recommendations.

3. The Commission shall seek to make suitable arrangements for consultation, co-operation and collaboration with such other organisations. In particular it shall seek to develop with such other organisations, a comprehensive cooperative information system relating to the ownership, control and movement of vessels engaged in activities within the competence of the Commission or such other organisations with the aim of reducing and eventually eliminating IUU fishing.

#### **Article 32 NON-PARTIES**

1. Contracting Parties 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. Contracting Parties 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 Contracting Parties, 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 Contracting Party or Parties affects the implementation of the objective of this Convention.

3. Contracting Parties 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. Contracting Parties, individually or jointly, shall seek the co-operation of any non-Contracting Party that has been identified as a relevant port State or market State to ensure compliance with the objective of this Convention.

**Article 33**  
**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 in the Convention Area may, by a written instrument delivered to the Chairperson of the Commission, in accordance with such procedures as may be established by the Commission, express its firm commitment to be bound by the terms of this Convention. Such commitment shall become effective thirty (30) days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Chairperson of the Commission. Notice of withdrawal shall become effective 90 days from the date of its receipt by the Chairperson of the Commission.

2. A fishing entity which has expressed its commitment to be bound by the terms of this Convention may participate in the Commission and its subsidiary bodies, and partake in decision making, in accordance with the rules of procedure adopted by the Commission. Articles 1 to 32, Article 35(2) and Article 36 apply, *mutatis mutandis*, to such a fishing entity. ]

**Note**

Similar to Article 5, this text and the text of Article 35(4), have been placed in brackets as it is clear more discussion is needed to find a way forward.

The following objectives are offered to provide a basis for discussing the issue and making progress on the Convention text:

- (a) A mechanism is necessary to enable and ensure a fishing entity is legally bound by the terms of the Convention.
- (b) Fishing entities must be subject to the same reporting, monitoring and compliance requirements and - in the event of non-compliance - sanctions as Contracting Parties.
- (c) Fishing entities must be able to participate fully in the work of the Commission, and participate in the taking of decisions, including the right to vote, under the terms of the Convention.

**Article 34**  
**RELATION TO OTHER AGREEMENTS**

This Convention shall not alter the rights and obligations of Contracting Parties which arise from the 1982 Convention, the 1995 Agreement, and other agreements compatible with the 1982 Convention and the 1995 Agreement, and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

**Article 35**  
**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.
2. In cases where a dispute between two or more Contracting Parties is of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Commission at its first meeting. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.
3. Any dispute concerning the interpretation or application of this Convention, including any dispute referred to in paragraph 2 above, may at the request of any Contracting Party be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant parts of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are parties to either of these instruments.
- [4. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this convention and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.] **See Note under Article 33.**

**Article 36**  
**AMENDMENTS**

1. Any Contracting Party may propose an amendment to this Convention by providing to the Executive Secretary the text of a proposed amendment at least 90 days in advance of a Commission meeting. The Executive Secretary shall circulate a copy of this text to all other Contracting Parties promptly.
2. Such proposals for amendment to this Convention shall be adopted by consensus.
3. Amendments to this Convention shall enter into force 90 days after all Contracting Parties which held this status on the date the amendments were adopted by the Commission have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depository.
4. Any Contracting Party that acquires that status after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the

Convention as amended once that amendment has entered into force in accordance with paragraph 3.

**Article 37**  
**SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL**

1. This Convention shall be open for signature by:
  - (a) States and the regional economic integration organisation participating in the International Consultations on the Establishment of the proposed South Pacific Regional Fisheries Management Organisation; and
  - (b) any other State having jurisdiction over waters adjacent to the Convention Area;

and shall remain open for signature for 12 months from the date on which it is opened for signature.

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 38**  
**ACCESSION**

1. This Convention shall be open for accession, after its closure for signature, by any State or regional economic integration organisation referred to in paragraph 1 of Article 37 and by any other State or regional economic integration organisation interested in the fishery resources in the Convention Area.
2. Instruments of accession shall be deposited with the Depositary.

**Article 39**  
**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, at least two of which have been deposited by coastal States adjacent to the Convention Area and two by States that are not coastal States adjacent to the Convention Area and whose fishing vessels are currently fishing in that area or have fished in that area in the past two years.

2. 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.

3. 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.

#### **Article 40 THE DEPOSITARY**

1. [X] shall be the Depositary of this Convention and of 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 37 or 38 and of the date of entry into force of the Convention and of any amendments thereto.

#### **Article 41 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 that have an interest in the fishery resources in the Convention Area.

2. The nature and extent of such participation 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.

3. Notwithstanding sub-paragraph 2, all such participants shall be entitled to participate fully in the work of the Commission, including the right 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 42  
WITHDRAWAL**

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

**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, entity referred to in Article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated adjacent to the Convention Area, or regional economic integration organisation, 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, entity or regional economic integration organisation.

**Article 45  
ANNEXES**

1. 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.
2. The Annexes to this Convention may be revised from time to time and any member of the Commission may propose revisions to an Annex. Notwithstanding the provisions of Article 36, if a revision to an Annex is adopted by consensus at a meeting of the Commission, it shall be incorporated in this Convention and shall take effect from the date of its adoption or from such other date as may be specified in the revision.

**Article 46**  
**INTERIM ARRANGEMENTS**

In order to ensure the conservation and sustainable use of fishery resources and to strengthen the effective exercise of flag state responsibility by Contracting Parties for fishing vessels flying their flag, the Interim Arrangements set out in Annex ..... shall apply upon the entry into force of this Convention and remain in force until the Commission decides otherwise.

**Note**

This article signals the need for a discussion about the period between the adoption of the Convention and its entry into force and also the period between the entry into force and the first meeting of the Commission. Some matters that have been agreed during the course of the negotiations such as the Consolidated Data Standards might be considered appropriate for inclusion in an Annex as provided for in this article in order that they have formal application from the date of entry into force of the Convention rather than having to await adoption by the Commission. Other matters such as whatever interim measures may be in place in respect of pelagic and bottom fisheries at the time of the adoption of the Convention may be considered more appropriate for inclusion in a non-binding declaration, possibly as part of the Final Act.

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

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

**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°.
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°.

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

1. A Review Panel to be established in accordance with Article 16 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 Contracting Party 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 Chair of the Commission and the Contracting Party that has presented objection to the decision shall each appoint one member. The name of the member appointed by the objecting Contracting Party shall be included in the notification of the objection to the Executive Secretary pursuant to Article 16 paragraph 2(a). The name of the member appointed by the Chair of the Commission shall be notified to the objecting Contracting Party 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 Contracting Party and the Chair of the Commission and shall not be a national of the objecting Contracting Party. If there is no agreement within this time period on the appointment of the third member, the President of the International Tribunal of the Law of the Sea shall make the appointment, 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 Contracting Party presents an objection to the decision on the same grounds, or where there is agreement pursuant to Article 16 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 Contracting Party that presented the first objection, two members shall be appointed by the Chair of the Commission within 10 days of the expiry of the objection period, one member shall be appointed by agreement between the subsequent objecting Contracting Parties within 15 days of the expiry of the objection period and one member shall be appointed by agreement between all the objecting Contracting Parties and the Chair 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 President of the International Tribunal of the Law of the Sea, 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 Contracting Parties and the Chair of the Commission in accordance with sub-paragraph 2 (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 Contracting Party may submit a memorandum to the Review Panel concerning the objection under review and the Panel shall allow any such Contracting Party 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 Contracting Party, or if there is more than one objecting Contracting Party, 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 16 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 Contracting Party or Parties 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 Contracting Party or Parties in substitution for the decision.
- (b) Subject to paragraphs (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 Contracting Party or Parties 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 Contracting Party or Parties shall, within 60 days, modify the relevant alternative measures as recommended by the Review Panel or institute dispute settlement proceedings under Article 35. 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 Contracting Party or Parties in the modified form in substitution for the decision. If the objecting Contracting Party or Parties choose to institute dispute settlement proceedings under Article 35 then neither the decision nor the modified alternative measures shall be binding on the objecting Contracting Party or Parties pending decisions made in those proceedings.

- (c) Subject to paragraphs (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 Contracting Party or Parties but the alternative measures do not have equivalent effect to the decision to which objection has been presented the objecting Contracting Party or Parties 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 Article 35. If the objecting Contracting Party or Parties adopt the measures recommended by the Review Panel these measures shall be deemed to be binding on the objecting Contracting Party or Parties in substitution for the decision. If the objecting Contracting Party or Parties choose to institute dispute settlement proceedings under Article 35 then neither the decision nor any measures recommended by the Review Panel shall be binding on the objecting Contracting Party or Parties pending decisions made in those proceedings.
- (d) Where the Review Panel makes findings and recommendations under paragraphs (b) or (c) the objecting Contracting Party or Parties 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 Chair within 45 days of the receipt of any such request.
- (e) If the Extraordinary Meeting convened under paragraph (d) confirms or modifies the recommendations of the Review Panel, the 60 day period under paragraphs (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 Contracting Parties in accordance with Article 16.

#### *Findings of Inconsistency*

- (f) If the Review Panel finds that the decision to which objection has been presented is inconsistent with this Convention, the 1982 Convention or the 1995 Agreement an Extraordinary Meeting of the Commission shall be convened by the Chair 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 Contracting Parties in accordance with Article 16.

- (h) If the Extraordinary Meeting of the Commission confirms its original decision, the objecting Contracting Party or Parties shall, within 45 days, implement the decision or institute dispute settlement proceedings under Article 35. If the objecting Contracting Party or Parties choose to institute dispute settlement proceedings under Article 35, the decision shall not be binding on the objecting Contracting Party or Parties 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 Contracting Party or Parties and is not inconsistent with this Convention or the 1982 Convention or the 1995 Agreement the objecting Contracting Party or Parties shall, subject to sub-paragraph (j), within 45 days implement the decision or institute dispute settlement proceedings under Article 35. If the objecting Contracting Party or Parties choose to institute dispute settlement proceedings under Article 35 the decision shall not be binding on the objecting Contracting Party or Parties 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 Contracting Party or Parties and is not inconsistent with this Convention or 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 Contracting Party or Parties 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 22 and 23, coastal State Contracting Parties and Contracting Parties 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 fisheries resources to the Commission for consideration by the Scientific Committee and, as appropriate, the Compliance 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 an analysis of the probability of achieving the objectives of any management strategy or plan adopted by the Commission at different levels of total allowable catch or total allowable fishing effort.

3. In accordance with Article 12, and on the basis of the advice of the Scientific Committee and any relevant advice of the Compliance 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 15 and 19, 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 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 19, 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**  
**INTERIM ARRANGEMENTS**