

DRAFT

South Pacific Ocean Regional Fisheries Management Agreement

The Contracting Parties,

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

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

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

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

Recognising economic and geographical considerations and the special requirements of developing States, in particular the least-developed among them, and small island developing States and their coastal communities, in relation to the conservation, management and sustainable development of fishery resources;

Noting the call from the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks for regional fisheries management organisations and arrangements to undertake performance reviews, and to cooperate in developing and applying best practice guidelines;

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

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

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

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

Have agreed as follows:

Article 1 DEFINITIONS

- (a) '1982 Convention' means the United Nations Convention on the Law of the Sea 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) 'Area' means the area to which this Agreement applies in accordance with article 4;
- (d) 'Code of Conduct' means the Code of Conduct for Responsible Fisheries adopted by the 28th session of the Conference of the Food and Agriculture Organisation of the United Nations (FAO) on 31 October 1995;
- (e) 'fishery resources' means the resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:
 - (i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77(4) of the 1982 Convention; and
 - (ii) highly migratory species listed in Annex 1 of the 1982 Convention excluding sauries;
- (f) 'fishing' means:
 - (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;
 - (iii) 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;
- (g) 'fishing vessel' means any vessel used or intended for fishing, including support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (h) 'flag State' means, unless otherwise indicated:
 - (i) a State whose vessels are entitled to fly its flag; or
 - (ii) a regional economic integration organisation in which vessels are entitled to fly the flag of a member State of that regional economic integration organisation;
- (i) 'IUU fishing' means activities as defined in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing, and other activities as may be decided by the Commission;
- (j) 'market State' means a State which imports, exports, re-exports or has a domestic market for fish products derived from fishing in the Area;
- (k) '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;
- (l) 'regional economic integration organisation' means a regional economic integration organisation to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
- (m) 'target fishery' means any fishery resource in the Area that is the object of fishing at the time of entry into force of this Agreement or is subsequently opened for such fishing by a decision of the Commission pursuant to article 20 of this Agreement;
- (n) 'transshipment' means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

Article 2 OBJECTIVE

The objective of this Agreement is, through the implementation of effective conservation and management measures and responsible fishing practices, to ensure the long-term conservation and sustainable use of fishery resources and safeguard the marine ecosystems in which those resources occur.

Article 3 CONSERVATION AND MANAGEMENT PRINCIPLES

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

- (a) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, and in accordance with international best practice;
- (b) fishing shall be commensurate with the sustainable and efficient use of fishery resources and the general duty to protect and preserve the marine environment;
- (c) overfishing and excess fishing capacity shall be prevented or eliminated;
- (d) full and accurate data on fishing shall be collected, reported and shared in a timely and appropriate manner;
- (e) decisions shall be based on the best scientific information available;
- (f) the precautionary approach as described in paragraph 2 below;
- (g) conservation and management measures established for the Area shall take into account the conservation and management measures adopted and applied in respect of the same fishery resources by coastal States within areas under national jurisdiction and ensure that the measures established for the Area do not undermine the effectiveness of the coastal State measures;
- (h) biodiversity in the marine environment shall be protected, taking into account the benefits of an ecosystem approach to fisheries management and the importance of deep sea ecosystems;
- (i) the interests of developing States shall be taken into account, consistent with the 1995 Agreement;
- (j) effective compliance with conservation and management measures shall be ensured and sanctions for any infringements shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of any benefits from their violations;
- (k) pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised.

2. The precautionary approach as described in the 1995 Agreement and the Code of Conduct shall be applied widely to the conservation and management of fishery resources in order to protect those resources and preserve the marine ecosystems in which they occur, and in particular the Contracting Parties shall:

- (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.

Article 4

AREA OF APPLICATION

1. This Agreement applies to the Area ...

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

- the western boundary of the proposed South Pacific regional fisheries management organisation should about the eastern boundary of the proposed Agreement area to be established under the Southern Indian Ocean Fisheries Agreement;
- the southern boundary of the proposed South Pacific regional fisheries management organisation should about the northern boundary of the Agreement area of the Commission for the Conservation of the Antarctic Living Marine Resources (CCAMLR);
- the eastern boundary of the proposed South Pacific regional fisheries management organisation should about the outer limit of the maritime jurisdictions of South American states;
- the northern boundary of the proposed South Pacific regional fisheries management organisation should not be delineated until the meeting had discussed fishery resources to be managed, the regulation of high seas enclaves within the proposed area and had received further scientific and technical information”]

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

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

Article 5 THE ORGANISATION

1. The Contracting Parties hereby agree to establish, maintain and strengthen the South Pacific Regional Fisheries Management Organisation “the Organisation”, which shall carry out its functions as set forth in this Agreement in order to achieve the objective of this Agreement.

2. The Organisation shall consist of:

- (a) a Commission;
- (b) a Scientific Committee, a Compliance Committee, an Eastern Sub-regional Management Committee, a Western Sub-regional Management Committee,

and any other subsidiary bodies and sub-committees that the Commission may establish from time to time to assist it in its work;

(c) a Secretariat.

3. The Organisation shall have international legal personality and shall enjoy in its relations with other international organisations and in the territories of the contracting Parties such legal capacity as may be necessary to perform its functions and achieve the objective of this Agreement. The immunities and privileges which the Organisation and its officers shall enjoy in the territory of a Contracting Party shall be subject to an agreement between the Organisation and the Contracting Party including, in particular, a headquarters agreement between the Organisation and the host Contracting Party.

4. The Chairperson of the Commission shall be the President of the Organisation and shall be its principal representative.

5. The headquarters of the Organisation shall be.....or at such other place as may be decided by the Commission.

Article 6 THE COMMISSION

1. Each Contracting Party shall be a member of the Commission and shall appoint one representative to the Commission who may be accompanied by alternative representatives, experts and advisers.

2. The Commission shall elect a Chairperson and a Vice-Chairperson, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than four years in succession. The Chairperson and Vice-Chairperson shall be representatives of different Contracting Parties.

3. The first meeting of the Commission shall take place no later than 12 months following the entry into force of the Agreement. Thereafter the Chairperson of the Commission shall convene an annual meeting unless the Commission decides otherwise.

4. Extraordinary meetings of the Commission may be held at such time and place as the Chairperson may determine, upon the request of a Contracting Party. The Commission may also, by consensus, agree on techniques for taking and recording decisions intersessionally.

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

Article 7

FUNCTIONS OF THE COMMISSION

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

- (a) adopt conservation and management measures, including the establishment of total allowable catches and/or total allowable fishing effort, to achieve the objective of this Agreement;
- (b) determine the nature and extent of participation in target fisheries;
- (c) develop, approve and monitor responsible fisheries management plans for target fisheries and, where appropriate, associated or dependent species;
- (d) develop data collection, verification, reporting and dissemination programmes to support fishery conservation and management;
- (e) promote the conduct of scientific research in support of fishery conservation and management and, in collaboration with the Scientific Committee, establish procedures for the conduct of fishing for scientific purposes;
- (f) co-operate and exchange data with relevant organisations and coastal States and promote compatibility between conservation and management measures in the Area and adjacent areas;
- (g) develop and implement effective monitoring, control, surveillance and enforcement procedures;
- (h) develop processes in accordance with international law to assess flag States' performance with respect to implementation of their obligations under this Agreement and adopt proposals if appropriate to ensure flag State performance;
- (i) develop and implement effective market-related measures;
- (j) adopt proposals for measures to monitor, combat and eliminate IUU fishing in the Area;
- (k) review the effectiveness in meeting the objective of this Agreement of the conservation and management measures adopted;
- (l) supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;
- (m) guide the Commission's subsidiary bodies in their work;
- (n) approve the budget of the Organisation;
- (o) adopt and amend as necessary its rules of procedure and financial regulations;
- (p) exercise any other function and take any other decisions that may be necessary for achieving the objective of this Agreement.

Article 8 SUBSIDIARY BODIES

1. The Commission may establish 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.
2. In establishing such additional subsidiary bodies the Commission shall provide specific terms of reference and methods of work as may be required, provided always that such specific terms of reference are fully consistent with the objective in article 2 of this Agreement and the conservation and management principles in article 3 of this Agreement and with the 1982 Convention and the 1995 Agreement.
3. All subsidiary bodies shall report, advise and make recommendations to 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, the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.
5. All subsidiary bodies may seek external advice as required on such terms as may be agreed by the Commission.
6. Subject to article 9, paragraph 4 of this Agreement, all subsidiary bodies shall operate under the rules of procedure of the Commission unless otherwise decided by the Commission.
7. The functions of the Scientific Committee, the Compliance Committee, the Eastern and Western Sub-regional Management Committees and any additional subsidiary bodies may be reviewed and amended as appropriate by the Commission from time to time.

Article 9 SCIENTIFIC COMMITTEE

1. The Scientific Committee shall meet once a year unless otherwise decided by the Commission.
2. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisors.
3. The functions of the Scientific Committee shall be to:
 - (a) plan, conduct and review such scientific assessments of fishery resources in the Area and the impact of fishing on the marine ecosystems in the Area as may be required by the Commission;

- (b) encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources and the marine ecosystems in the Area;
 - (c) provide such other scientific advice to the Commission and its subsidiary bodies as may be required by the Commission.
4. The rules of procedure for the conduct of the meetings of the Scientific Committee and the exercise of its functions shall include procedures for the presentation of minority reports.

Article 10 COMPLIANCE COMMITTEE

1. The Compliance Committee shall meet once a year unless otherwise decided by the Commission.
2. Each Contracting Party shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives and advisors.
3. The functions of the Compliance Committee shall be to:
 - (a) provide advice to the Commission on the implementation of, and compliance with, conservation and management measures adopted under this Agreement or under consideration by the Commission;
 - (b) provide such other advice relating to compliance with, and enforcement of, this Agreement as may be required by the Commission;
 - (c) coordinate compliance activities undertaken by or on behalf of the Commission.

Article 11 EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES

1. The Eastern and Western Sub-regional Management Committees shall each meet at least once a year unless otherwise decided by the Commission.
2. The functions of the Eastern and Western Sub-regional Management Committees shall be to develop and make recommendations to the Commission on conservation and management measures, including the establishment of a total allowable catch or total allowable fishing effort, and on participation in target fisheries, in respect of fishery resources in that part of the Area for which the Committee has responsibilities in accordance with paragraph 3 of this article. Such recommendations shall be consistent with the objective in article 2 of this Agreement, with the conservation and management principles in article 3 of this Agreement and with any measures of general application adopted by the Commission. In developing its recommendations each Committee shall also take into account the advice and recommendations of the Scientific Committee.

3. (a) The Eastern Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Area that lies east of Meridian 120;
 - (b) The Western Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Area that lies west of Meridian 120.
4. The membership of the Eastern and Western Sub-regional Management Committees shall be the members of the Commission situated adjacent to, or whose vessels are fishing in, that part of the Area for which the Committees respectively have responsibilities. Any member of the Commission not represented on either one of the Sub-regional Management Committees may send a representative to participate in the deliberations of each Committee as an observer.
 5. The Eastern and Western Sub-regional Management Committees shall make all efforts to adopt their recommendations to the Commission by consensus. If all efforts to reach agreement on a recommendation by consensus have been exhausted they shall adopt the recommendation by a two-thirds majority which must include at least two members that are situated adjacent to that part of the Area for which the relevant Committee has responsibilities and two other members whose vessels are fishing in that part of the Area.
 6. Any extraordinary costs incurred for the work of either of the Sub-regional Management Committees shall be borne by the members of the relevant Committee.

Article 12 SECRETARIAT

1. The Secretariat shall perform the functions delegated to it by the Commission.
2. The chief administrative officer of the Secretariat shall be the Executive Secretary, who shall be appointed by the Commission according to such procedures and on such terms as it may determine.
3. Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such rules and procedures as may be determined by the Commission.
4. The Executive Secretary shall, subject to the general supervision of the Commission, have full power and authority over any employees and employee-related issues of the Secretariat and shall perform such other functions as the Commission shall prescribe.
5. In order to minimize cost to the members of the Commission, the Secretariat to be established under this Commission shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions and more specifically the availability of services under contractual arrangement.

Article 13 BUDGET

1. Each Contracting Party shall contribute to the Budget. The contribution by each Contracting Party shall be according to a combination of an equal basic fee, and a fee based on its total catch of fishery resources. The Commission shall adopt and amend the proportion in which these contributions are applied taking into account the economic status of each Contracting Party. For Contracting Parties with territory adjoining the Area, this shall be the economic status of that territory.
2. The Commission may request and accept financial contributions and other forms of assistance from organisations, individuals and other sources for purposes connected with the fulfilment of its functions.
3. The financial activities of the Organisation, including the proportion of contributions referred to in paragraph 1, shall be conducted in accordance with Financial Regulations adopted by the Commission.
4. The Executive Secretary shall notify each Contracting Party of the contribution due from that Party as calculated under paragraph 1, and as soon as possible thereafter each Contracting Party shall pay to the Organisation its contribution.
5. Contributions shall be payable in the currency of the country in which the headquarters of the Organisation is located, except if otherwise authorised by the Commission.
6. The Executive Secretary shall for each financial year submit a draft of the annual budget to each Contracting Party together with a schedule of contributions, not less than 60 days before the annual meeting of the Commission at which the budget is to be considered. In preparing the draft budget the Secretariat shall take full account of the need for cost effectiveness together with the guidance of the Commission as to the meetings of the subsidiary bodies that may be required in the budget year.
7. A Contracting Party acceding to this Agreement during the course of a financial year shall contribute in respect of that year a part of the contribution calculated in accordance with the provisions of this article that is proportional to the number of complete months remaining in the year.
8. Unless otherwise decided by the Commission, a Contracting Party that is in arrears with its payment of any monies owing to the Organisation by more than two years shall not participate in the taking of any decisions by the Commission.
9. The financial affairs of the Organisation shall be audited annually by external auditors to be selected by the Commission.

Article 14 DECISION-MAKING

1. As a general rule, decisions by the Commission shall be by consensus. For the purposes of this article, "consensus" means the absence of any formal objection made at the time the decision was taken.
2. Except where this Agreement expressly provides that a decision shall be made by consensus, if all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure shall be taken by a majority of those present and voting. Decisions on questions of substance shall be taken by a three-fourths majority of those present and voting. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Commission by consensus or by the majority required for decisions on questions of substance.
3. When, in relation to cases covered in paragraph 2, it appears to the Chairperson that all efforts to reach a decision by consensus have been exhausted, the Chairperson shall fix a time during the Commission meeting for taking the decision by vote. At the request of any representative, the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same meeting as the Commission may decide. At that time, the Commission shall take a vote on the deferred question. This rule may be applied only once to any question.
4. Where this Agreement expressly provides that a decision on a proposal shall be taken by consensus and the Chairperson determines that there would be objection to such proposal, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.
5. (a) Decisions of the Commission on conservation and management measures of specific application to fishery resources in that part of the Area that lies to the east of Meridian 120, including the establishment of a total allowable catch or total allowable effort for that part of the Area, shall be based on the recommendations of the Eastern Sub-regional Management Committee;
(b) Decisions of the Commission on conservation and management measures of specific application to fishery resources in that part of the Area that lies the west of Meridian 120, including the establishment of a total allowable catch or total allowable fishing effort for that part of the Area, shall be based on the recommendations of the Western Sub-regional Management Committee.
6. If the Commission does not accept the recommendation of the relevant Sub-regional Management Committee on any matter it shall return the matter to that Sub-regional Management Committee for further consideration. The Sub-regional Management Committee shall reconsider the matter in the light of the views expressed by the Commission.
7. Subject to paragraphs 8 and 9, a decision of the Commission shall become binding 60 days after the date of its adoption.
8. A Contracting Party which has voted against a decision or which was absent during the Meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel

constituted in accordance with the procedures set out in Annex.....to this Agreement on the grounds that:

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

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

10. If the review panel finds that the decision of the Commission need not be modified, amended or revoked, the decision shall become binding on all Contracting Parties 30 days from the date of communication by the Chairperson of the findings and recommendations of the review panel.

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

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

Article 15 TRANSPARENCY

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

2. The Commission shall publish its conservation and management measures when adopted and shall maintain a public record of all conservation and management measures in force in the Area.

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

4. Representatives of non-Parties, relevant intergovernmental organisations and non-governmental organisations, including environmental organisations with recognised experience in matters pertaining to the Commission and the fishing industry of any Contracting Party operating in the Area, shall be afforded the opportunity to take part in the meetings of the Commission and of its subsidiary bodies, as observers or otherwise as appropriate, in accordance with the rules of procedure adopted by the Commission. The rules of procedure shall not be unduly restrictive in this respect.

Such representatives shall have timely access to relevant information, in accordance with the rules of procedure of the Commission.

Article 16
RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

1. The Commission shall give full recognition to the special requirements of developing States Parties to this Agreement, in particular the least developed among them and small island developing States, and of territories and possessions, in relation to the conservation and management of fishery resources in the Area and the sustainable development of such resources.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for fishery resources covered by this Agreement, the Contracting Parties shall take into account the special requirements of developing States, in particular:

- (a) the vulnerability of developing States in the region which are dependent on the exploitation of 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, particularly small island developing States;
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States in the region.

3. The Contracting Parties shall cooperate through the Commission and other sub-regional or regional organisations involved in the management of fishery resources to:

- (a) enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage fishery resources and to develop their own fisheries for such resources;
- (b) assist developing States, in particular the least developed among them and small island developing States, to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Agreement;
- (c) facilitate the participation of developing States in the work of the Commission and its subsidiary bodies.

4. Cooperation with developing States, 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 in the Area 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.

Article 17
CONSERVATION AND MANAGEMENT MEASURES

1. The Commission shall adopt conservation and management measures for target fisheries, new target fisheries, and for associated or dependent species.
2. The conservation and management measures shall include measures to:
 - (a) ensure the long-term sustainability of fishery resources and to promote the objective of their responsible utilisation, taking in to account *inter alia*: the biological unity and other biological characteristics of the target fishery; uncertainties relating to the size and productivity of the target fisheries; biological reference points, the condition of the target fishery in relation to such biological reference points, levels and distributions of fishing mortality; the impact of fishing on non-target and associated or dependent species; and existing and predicted oceanic, environmental and socio-economic conditions;
 - (b) prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort for target fisheries, and consequent by-catch of non-target species, do not exceed those commensurate with the sustainable use of fishery resources;
 - (c) determine specific biological reference points above which the sustainability of a target fishery is ensured, consistent with article 6 of the 1995 Agreement, and to ensure that when such specific biological reference points are approached, further measures are taken to ensure they are not be exceeded;
 - (d) ensure that in the event specific biological reference points are exceeded, Contracting Parties, without delay, take action to restore the target fishery to a level above those reference points within a reasonable period of time;
 - (e) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular threatened species, through measures including the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
 - (f) allow for the precautionary and gradual development of new target fisheries as provided for in article 20 of this Agreement;
 - (g) regulate, where necessary, the conduct of fishing for scientific purposes;and shall include any other measures necessary to give effect to this Agreement.

3. In addition, the Commission shall adopt measures to be applied on an emergency basis where fishing presents a serious threat to the sustainability of fishery resources or when a natural phenomenon has a significant adverse impact on the status of fishery resources to ensure that fishing does not exacerbate such threat or adverse impact. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 18
ESTABLISHMENT OF TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT OF TARGET FISHERIES

1. In addition to the measures adopted under article 17, the Commission shall determine a total allowable catch or total allowable fishing effort, including any catch or effort for scientific research, for all existing target fisheries within one year of the entry into force of this Agreement. In determining the total allowable catch or total allowable fishing effort for each target fishery, the Commission shall take into account all of the following factors:

- (a) the objective in article 2 of this Agreement and the conservation and management principles in article 3 of this Agreement;
- (b) the conservation and management measures adopted by the Commission under articles 17 and 21 of this Agreement;
- (c) the advice and recommendations of the Scientific Committee;
- (d) the status and stage of development of the target fishery;
- (e) fishing patterns of the target fishery, catch of the same fishery resource within areas under national jurisdiction, and catch of associated or dependent species;
- (f) the interdependence of fishery resources, including by-catch of associated or dependent species, and of species governed by other regional fisheries management organisations;
- (g) the fisheries management plans approved by the Commission;
- (h) regions and sub-regions of the Area identified on the basis of the geographical and biological characteristics of the target fishery, including the areas and periods in which fishing may occur;
- (i) the interests of developing States in whose areas of national jurisdiction fishery resources of the target fisheries also occur;
- (j) the fishing gear and technology which may be used in respect of different target fisheries;
- (k) relevant ecological and biological factors limiting the nature of fishery resources that may be harvested;
- (l) relevant environmental factors which may have an effect upon fishery resources of the target fishery and associated or dependent species;
- (m) relevant conservation and management measures adopted by other intergovernmental organisations.

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

Article 19 PARTICIPATION IN TARGET FISHERIES

1. When taking decisions regarding participation in target fisheries, including the allocation of the total allowable catch or total allowable fishing effort, the Commission shall take into account the following:

- (a) compliance with the conservation and management measures under this Agreement, and with those of other regional fisheries management organisations;
- (b) demonstrated capacity and willingness to exercise effective flag State control over flag vessels;
- (c) contribution to the conservation and management of fishery resources in the Area, including the provision of accurate data, the conduct of scientific research and steps taken to establish cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (d) past and present fishing patterns, practices and catches in the Area;
- (e) the interests of developing States in whose areas of national jurisdiction fishery resources of the target fisheries also occur;
- (f) the needs of coastal States 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 resources;
- (h) contribution to the responsible development of new target fisheries.

2. Decisions on participation in target fisheries, including the allocation of total allowable catch or total allowable fishing effort, shall be taken by consensus.

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

Article 20 DEVELOPMENT OF NEW TARGET FISHERIES

1. A fishery resource that is not a target fishery at the time of the entry into force of this Agreement shall be opened as a target fishery only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery resource, and any associated or dependent species.

2. Such preliminary conservation and management measures, which may include requirements regarding notification of intention to fish, the establishment of a development plan, specification of fishing gear, the presence of observers, the collection of data, and the conduct of research, shall be consistent with the objective in article 2 of this Agreement and conservation and management principles contained in article 3 of this Agreement. The measures shall ensure that the new target fishery is developed on a precautionary and gradual basis until sufficient information is acquired to enable the Commission to adopt the full range of conservation and management measures referred to in articles 17, 18 and 21 of this Agreement.

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 target fisheries prior to their commencement.

Article 21 MARINE ENVIRONMENT

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

- (a) spatial closures within the Area;
- (b) temporal closures of target fisheries;
- (c) the regulation of fishing methods and gear-types used, including the prohibition of certain gear types, that may have an impact on associated or dependent species and/or vulnerable or unique habitats or ecosystems;
- (d) measures to mitigate the effects of lost or abandoned fishing gear on vulnerable marine ecosystems;
- (e) measures to reduce pollution from fishing vessels operating in the Area, and the effects of any such pollution;
- (f) information exchange and co-ordination with relevant organisations, including organisations with responsibility for land-based sources of pollution and pollution from vessels.

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

Article 22 DATA EXCHANGE

1. To enhance the information base for the conservation and management of fishery resources, associated and dependent species and the safeguarding 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 procedures for, *inter alia*:

- (a) the collection, verification and submission of all relevant data by Contracting Parties;
- (b) the compilation and management of accurate and complete data to ensure the best scientific advice is available;
- (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 Area, the status of fishery resources managed under this Agreement, fishery resource assessments, research programmes in the Area, and cooperative initiatives with regional organisations.

Article 23 CONTRACTING PARTY DUTIES

1. Each Contracting Party shall, in respect of its activities within the Area:
 - (a) promptly implement this Agreement and any conservation and management measures adopted by the Commission;
 - (b) co-operate in furthering the objective of this Agreement;
 - (c) take all necessary measures in order to ensure the effectiveness of the conservation and management measures adopted by the Commission;
 - (d) contribute to efforts to eliminate IUU fishing;
 - (e) collect and exchange scientific, technical and statistical data relating to the marine ecosystems of the Area, in particular with respect to fishery resources in the Area, and ensure that:
 - (i) data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the conservation and management measures adopted by the Commission;
 - (ii) appropriate steps are taken to verify the accuracy of such data;

- (iii) such statistical, biological and other data and information as the Commission may decide are provided annually.

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

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

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

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

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

Article 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 Area comply with the provisions of this Agreement 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 Area;
 - (c) it develops and implements a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Area in accordance with requirements adopted by the Commission;
 - (d) it investigates immediately and reports fully on actions taken in response to alleged violations by vessels flying its flag of conservation and management measures adopted by the Commission;
 - (e) penalties applicable for violations by vessels flying its flag are of an appropriate severity, taking into account the value of the catch and the imperative of preventing violations of this Agreement;
 - (f) vessels flying its flag land fishery resources caught in the Area only at ports which comply with best international standards in respect of port State measures, and in accordance with guidance to be developed by the Commission.
2. No flag State Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that flag State Contracting Party. A vessel may not be authorised to fish in the Area if it has been placed on the Commission IUU vessel list established under article 27.
3. Each flag State Contracting Party shall:
- (a) authorise the use of vessels flying its flag for fishing in waters beyond national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law;
 - (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) ensure that vessels that have been placed on the Commission IUU vessel list cannot be entered in the register of vessels entitled to fly its flag and authorised to engage in fishing in the Area;
 - (d) in conformity with conservation and management measures adopted by the Commission, make available to each annual Commission meeting a report on its fishing in the Area;
 - (e) collect and share, in a timely manner, complete and accurate data describing fishing by vessels flying its flag operating in the Area, in particular on vessel position, retained catch, discarded catch and fishing effort, where appropriate maintaining confidentiality of data;
 - (f) adopt procedures to permit access by observers from other Contracting Parties to carry out functions as agreed by the Commission;
 - (g) at the request of any other Contracting Party, and when provided with the relevant information, promptly investigate any alleged violation by fishing

vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted by the Commission. A reply, including details of any action taken or proposed to be taken in relation to such alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two months of such request. Reports on the progress of the investigation shall be provided to the Commission at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed;

- (h) ensure that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Agreement or of any conservation and management measures adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the Area until such time as it has complied with all outstanding sanctions imposed by the flag State Contracting Party in respect of the violation;
- (i) make information available on the beneficial ownership of vessels flying its flag where the information would facilitate the investigation of an alleged violation of a conservation and management measure adopted by the Commission.

Article 25 PORT STATE DUTIES

1. Measures taken by a port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of 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) not permit landings, transshipment, or supply services in relation to fishing vessels that have engaged in fishing in the Area unless they are satisfied that fish on board the vessel have been caught in a manner consistent with the conservation and management measures adopted by the Commission;
 - (c) provide assistance to flag State Contracting Parties, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports or at its offshore terminals and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Agreement and with the conservation and management measures adopted by the Commission; and
 - (d) implement best international standards in respect of port State measures in accordance with guidance to be developed by the Commission.

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

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

Article 26 **MARKET- RELATED MEASURES**

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

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

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

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

Article 27 **MONITORING, COMPLIANCE AND ENFORCEMENT**

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

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

- (a) the authorisation of vessels to fish, the marking of vessels and fishing gear, the recording of fishing activities, and the reporting of vessel movements and activities by a satellite vessel monitoring system;
- (b) an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels, and procedures for notification of inspection vessels and aircraft that may participate in the programme;

(c) an observer programme based on common standards for the conduct of observation, including, *inter alia*, arrangements for the placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party with the consent of that Party; an appropriate level of coverage for different sizes and types of fishing vessels and fishery research vessels; and requirements for reporting by observers of scientific information and information regarding apparent violations of conservation and management measures, taking into account the need to ensure the safety of observers;

(d) the control and supervision of transshipment;

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

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

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

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

5. The Commission may adopt procedures to ensure that any vessel that has been placed on the Commission IUU vessel list is prohibited from enjoying any benefits in the fisheries.

6. If, within two years of the entry into force of this Agreement, the Commission has not adopted procedures as outlined in paragraph 2(b) above, or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Agreement to ensure compliance with the conservation and management measures adopted by the Commission, it shall, at the request of any Contracting Party, apply the procedures for boarding and inspection as stipulated in articles 21 and 22 of the 1995 Agreement, in order to strengthen the effective discharge by Contracting Parties of their obligations under this Agreement and where applicable, under the 1995 Agreement.

Article 28

ANNUAL REPORT OF THE COMMISSION

1. The Commission shall publish an annual report, which shall include details of decisions taken by the Commission to achieve the objective of this Agreement including the establishment of fisheries management plans and actions taken by Contracting Parties to implement the plans. The report shall also provide information

on actions taken by the Commission in response to any recommendations from the General Assembly of the United Nations or the FAO.

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

Article 29 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 Agreement. Such reviews may include examination of the effectiveness of the provisions of the Agreement itself and shall be undertaken at least every three years.

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

3. The Commission shall take account of the recommendations arising from any such review, including through the appropriate amendment of its conservation and management measures and the mechanisms for their implementation. Any proposals for amendment to the provisions of this Agreement arising from any such review shall be dealt with in accordance with article 35.

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

Article 30 COOPERATION WITH OTHER ORGANISATIONS

1. The Commission shall cooperate, as appropriate, with the FAO, with other specialised agencies of the United Nations, and with other relevant organisations on matters of mutual interest.

2. The Commission shall take account of the conservation and management measures or recommendations adopted by other regional fisheries management organisations and other relevant intergovernmental organisations that have competency in relation to areas adjacent to the Area or in respect of living resources not covered by this Agreement, including dependent or associated species, and that have objectives that are consistent with, and supportive of, the objective of this Agreement. It shall endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures or recommendations.

3. The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with such other organisations. In particular it shall seek to 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 31 NON-PARTIES

1. Contracting Parties shall exchange information with respect to the activities of fishing vessels engaged in fishing in the Area that are flying the flags of non-Contracting Parties to this Agreement. Contracting Parties shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of conservation and management measures applicable in the Area, and shall report to the Commission any action taken in response to fishing in the Area by non-Contracting Parties.

2. Taking account of articles 116 to 119 of the 1982 Convention, the Contracting Parties, individually or jointly, may draw the attention of any State or fishing entity which is a non-Contracting Party to this Agreement to any activity which in the opinion of the Contracting Party or Parties affects the implementation of the objective of this Agreement.

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

4. Contracting Parties, individually or jointly, shall seek the co-operation of any non-Contracting Party that has been identified as a relevant port State or market State.

Article 32 FISHING ENTITIES

1. After the entry into force of this Agreement any fishing entity whose vessels have fished or intend to fish for fishery resources in the Area may, by a written instrument delivered to the Chairperson of the 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 Agreement. Such commitment shall become effective thirty (30) days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Chairperson of the 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 Agreement 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 34(2) and article 35 apply, *mutatis mutandis*, to such a fishing entity.

Article 33
RELATION TO OTHER AGREEMENTS

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

Article 34
INTERPRETATION AND SETTLEMENT OF DISPUTES

1. Contracting Parties shall use their best endeavours to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to either of these instruments.
2. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Agreement and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

Article 35
AMENDMENTS

1. Any Contracting Party may propose an amendment to this Agreement by providing to the Depositary the text of a proposed amendment at least 60 days in advance of a Commission meeting. The Depositary shall circulate a copy of this text to all other Contracting Parties promptly.
2. Such proposals for amendment to this Agreement shall be adopted by consensus.
3. Amendments to this Agreement shall enter into force 90 days after all Contracting Parties which held this status at the time the amendments were adopted have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.
4. Any Contracting Party that acquires that status after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the Agreement as amended once that amendment has entered into force in accordance with paragraph 3.

Article 36
SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL

1. This Agreement 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 Area;and shall remain open for signature for 12 months from the date on which it is opened for signature.
2. This Agreement is subject to ratification, acceptance or approval by the signatories.
3. Instruments of ratification, acceptance or approval shall be deposited with the Depository.

Article 37
ACCESSION

1. This Agreement shall be open for accession, after its closure for signature, by any State or regional economic integration organisation referred to in paragraph 1 of article 36 and by any other State or regional economic integration organisation interested in the fishery resources in the Area.
2. Instruments of accession shall be deposited with the Depository.

Article 38
ENTRY INTO FORCE

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

Article 39

THE DEPOSITARY

1. [X] shall be the Depositary of this Agreement and of any amendments thereto. The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to article 102 of the Charter of the United Nations.
2. The Depositary shall inform all signatories of and Contracting Parties to this Agreement of signatures and of instruments of ratification, accession, acceptance or approval deposited under article 36 and of the date of entry into force of the Agreement and of any amendments thereto.

Article 40 WITHDRAWAL

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

Article 41 TERMINATION

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

Article 42 RESERVATIONS

No reservations or exceptions may be made to this Agreement.

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

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

DRAFT