

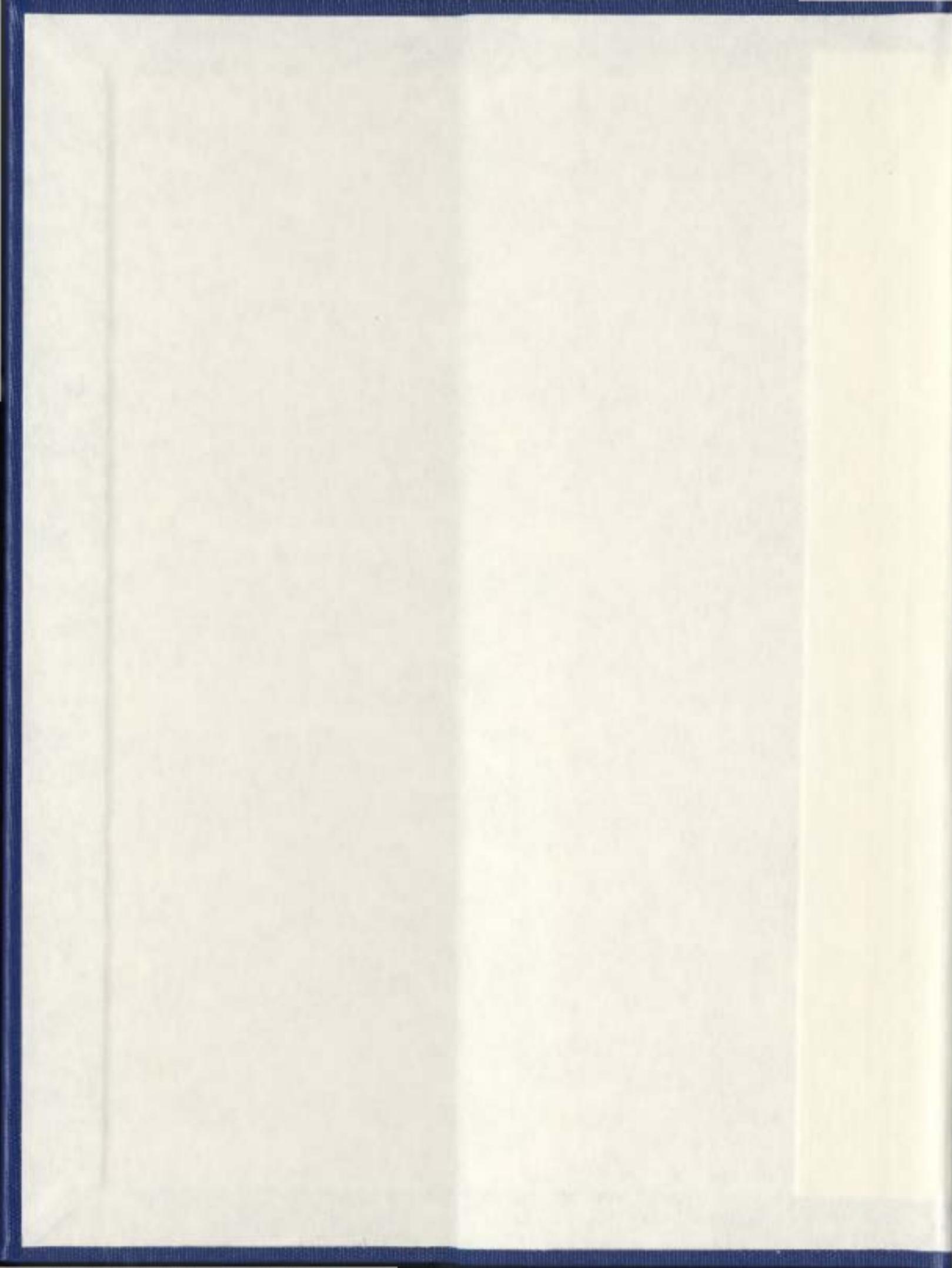
CURRENT INTERNATIONAL LEGAL REGIME
AND ITS EFFECTIVENESS IN THE MANAGEMENT
OF SHARED FISH STOCKS

CENTRE FOR NEWFOUNDLAND STUDIES

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**Current International Legal Regime and Its Effectiveness
In the Management of Shared Fish Stocks**

by

Hajimatt Azizan

**A major paper submitted to the School of Graduate Studies
in partial fulfilment of the requirements for the degree of**

**Master of Marine Studies
*Fisheries Resource Management***

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ABSTRACT

While shared stocks create some commonality of interests among states, they also present a potential source of tension, particularly when jurisdictional problems and resource access issues are present. Due to their mobility throughout the various maritime spaces, shared fish stocks pose special management and conservation problems.

Lack of cooperation among relevant states and blatant disregard of the rights and duties of coastal states by distant water fishing (DWF) states have resulted in the uncontrollable harvesting of the resource and the cause of the many fisheries conflicts on the high seas. Canada's 1995 confrontation with Spain, which is now known as the 'turbot war' incident, is but one in the long history of high seas conflicts among sovereign states over shared fish stocks. Although the incident was the worst diplomatic dispute in the history of Canada-EU relationship, the action was necessitated by Canada's need to raise international awareness to the growing problems of managing shared fish stocks.

This paper sets out to examine the effectiveness of the current international legal regime for the conservation and management of shared fishery stocks on the high seas beyond national jurisdictions. It provides the reader with an overview of the evolution of the international legal fisheries regime, and using Canada's experience as the backdrop to the discussion, evaluates the regime's effectiveness in enforcing international conservation measures against illegal, unregulated and unreported (IUU) fishing vessels on the high seas.

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LIST OF ACRONYMS

CCAMLR	Commission on the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
COFI	Commission on Fisheries
CFPA	Coastal Fisheries Protection Act
DWF	Distant Water Fishing
EC	European Community
EEZ	Exclusive Economic Zone
EIFAC	European Inland Fishery Advisory Commission
FAO	Food and Agriculture Organization of the United Nations
FOC	Flags-of-Convenience
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
ICNAF	International Commission for the Northwest Atlantic Fisheries
ICRW	International Convention for the Regulation of Whaling
IOTC	Indian Ocean Tuna Commission
IPHC	International Pacific Halibut Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported Fishing
IUU	Illegal, Unregulated and Unreported
IWC	International Whaling Commission
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	Northeast Atlantic Fisheries Commission
OECD	Organization for Economic Cooperation and Development
OIC	Ocean Institute of Canada
PSC	Pacific Salmon Commission
RFMO	Regional Fisheries Management Organization
RFO	Regional Fisheries Organization
TAC	Total Allowable Catch
UNCLOS	United Nations Convention on Law of the Sea
UNFA	United Nations Fish Stocks Agreement Unreported Fishing
WCPFC	Western and Central Fisheries Commission

1.0 INTRODUCTION

1.1 Background Information

Canada's active involvement in the United Nations and other international organizations has earned this country a reputation as a positive force for good in the world. However, 1995 marked the turning point in Canada's traditional international role as the world peacekeeper. It was in March that year when the Government of Canada took the unprecedented action of using force to arrest the Spanish-flagged fishing trawler Estai and its crew on the high seas, some 245 miles off Canada's coast, for violating its Coastal Fisheries Protection Act ("CFPA").

The seizure, as expected, outraged the Government of Spain who considered the action as a serious violation by Canada of the fundamental, customary and conventional norms of international law, relating principally to the freedoms of the high seas and to the exclusive exercise of jurisdiction over ships by the state whose flag they were flying (ICJ, 1995). In its communiqué to the Canadian Department of Foreign Affairs and International Trade on 10 March 1995, the Spanish Government "categorically condemns the pursuit and harassment of (the) Spanish vessel by vessels of the Canadian Navy, in flagrant violation of the international law in force, since these acts are taking place outside the 200-mile zone"(ICJ, 1995). The seizure of the Estai also drew strong criticism from the European Union who described Canada's boarding and arrest of the

Estai as “acting in violation of the International Law of the Sea” and declared that Canada was engaging in “open piracy”. (Matthews, 1996)

The amendment to the Coastal Fisheries Protection Act in 1994 and the subsequent apprehension of the Spanish fishing trawler was an act of desperation by Canada to draw into focus international attention to the growing problem concerning the management of shared fishery resources that was negotiated by various nations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Although Canada and Spain are members of the regional fisheries body, the Northwest Atlantic Fisheries Organization (NAFO), which is responsible for fisheries conservation and management of most stocks beyond the coastal states’ EEZs in the NW Atlantic Ocean, neither state was able to resolve their differences within the organization. Conflict between the two countries had been brewing for some time over the activities of the Spanish fleet, specifically concerning the overfishing of North Atlantic Fisheries Organization (NAFO) recommended quotas and the alleged failure of Spanish fishing vessels to comply with basic conservation measures of those stocks adjacent to Canada’s EEZ. At the time of the arrest, Canadian fisheries authorities alleged the Spanish vessel and its master were guilty of taking undersized Greenland halibut (also known as turbot) and using undersized mesh in contravention of NAFO conservation and management measures. The allegation was categorically denied by the European Union fisheries Commissioner Emma Bonino on behalf of the Spanish government (Missios & Plourde, 1996; p 145)

The use of force by Canada to settle fisheries dispute on the high seas is not an isolated incident in the long history of fishing. Confrontations on the high seas between coastal states and distant-water fishing (DWF) states are well documented in various fisheries literature. Competition for fisheries and conflict of interests between states prompted the international community to establish the guiding principles and rules that govern fishing activities beyond national jurisdiction. Notwithstanding the significant legal progress made over the years, from the early codification of freedom of fishing on the high seas to the present expansion of national jurisdiction under the 1982 UNCLOS, pressure for change in international fisheries law is still continuing.

1.2 Purpose and Scope

The aim of this paper is to review the current international legal regime for the conservation and management of shared fishery stocks on the high seas beyond national jurisdictions. Using Canada's experience with the management of shared fisheries stocks beyond her exclusive economic zones as the backdrop to this discussion, this review will evaluate the effectiveness of the international regime in enforcing international conservation measures against illegal, unregulated and unreported fishing vessels on the high seas. In this paper, the term 'international' also encompass the conventions of regional or sub-regional fisheries management organizations (RFMOs).

In principle, the term “shared stock” could be one that is shared between (a) two neighbouring coastal states, (b) two non-neighbouring coastal states on opposite sides of a gulf or ocean or (c) a coastal state and a flag state (distant water fishing states).

The 1982 UNCLOS does not use the term “shared stocks” in its provisions. Instead, Article 63 of the Convention makes reference to:

- (a) “the same stock or stocks of associated species [that] occur within the exclusive economic zone of two or more coastal states” (Article 63 (1)); and
- (b) “[T]he same stock or stocks of associated species [that] occur within the exclusive economic zone and in an area beyond and adjacent to the zone” (Article 63 (2)), (also known as the “straddling” fish stocks).

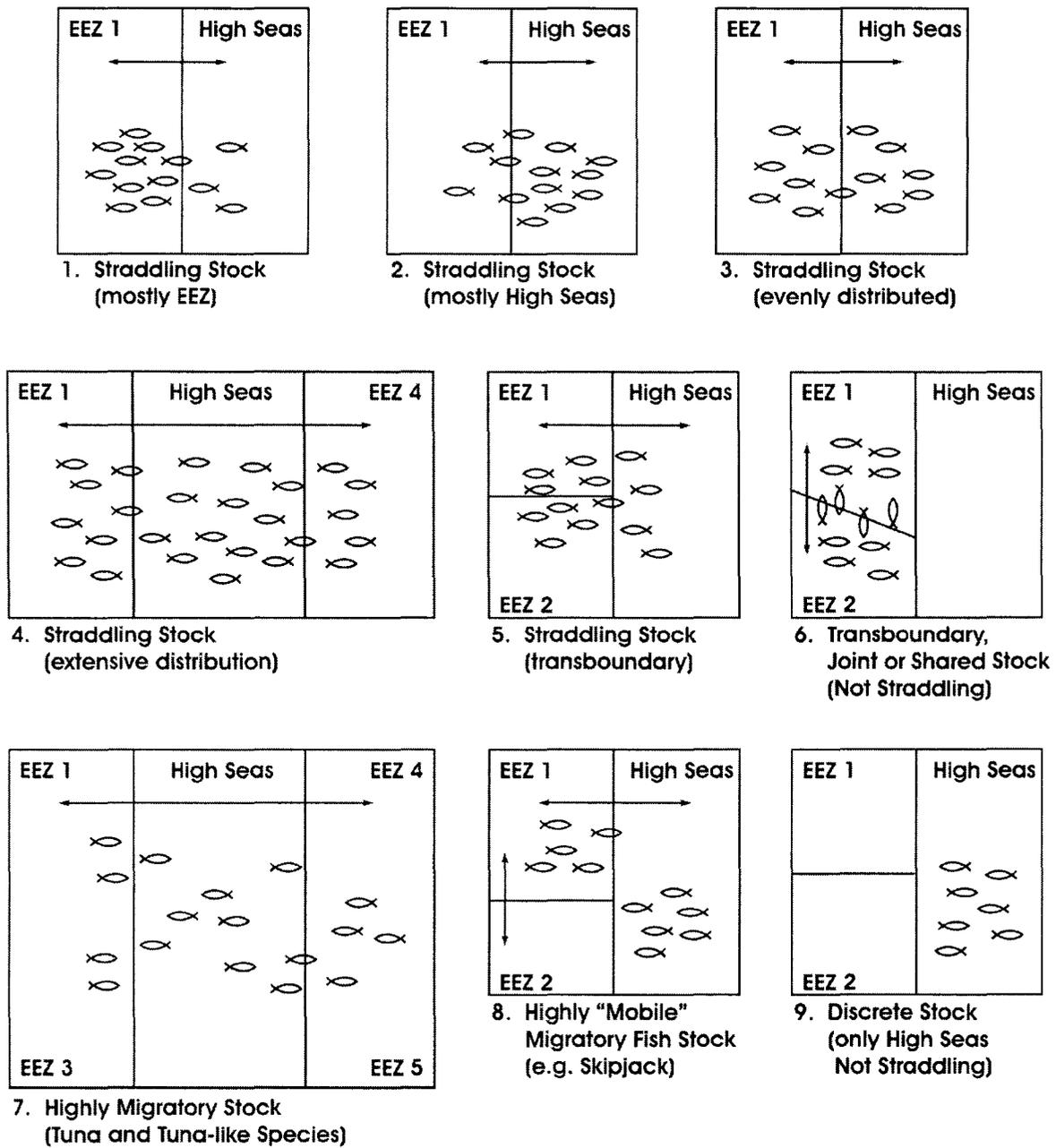
The Food and Agriculture Organisation of the United Nations (FAO) defines a “shared stock” as any stock whose distribution (a) extends over more than one zone under national jurisdiction, or (b) includes the open ocean and one or more zones under national jurisdiction. Thus, it is understood by the FAO definition, the term “shared stock” to include:

- (a) fish resources crossing the EEZ boundary of one coastal state into the EEZ(s) of one, or more, other coastal states – “transboundary stocks”;
- (b) highly migratory fish stocks, which due to their highly migratory nature, are to be found, both within the coastal state EEZ and the adjacent high seas;

- (c) all other fish stocks (with the exception of anadromous/catadromous stocks) that are to be found, both within the coastal state EEZ and the adjacent high seas – “straddling stocks”; and
- (d) fish stocks that are to be found exclusively in the high seas – discrete high seas fish stocks.

These categories are not mutually exclusive, as one can find many examples of fish stocks that fall into Category (b), or Category (c), which also fall into Category (a) (Munro, 2002). Although the FAO definition of shared stock covers “discrete high seas fish stock” that is fished by more than one country; however, such discreet stock does not appear to exist (Simpson, 1985).

For the purpose of this paper ‘shared’ stock includes transboundary stocks, straddling stocks and highly migratory stocks.



Adapted from Meltzer, E. (2005)

FIGURE 1: TYPES OF SHARED FISH STOCKS

2.0 POLITICS OF THE SEA

2.1 The Concept of Open Access in Fisheries Management

The classic international law had been structured on the existence of two broad types of maritime areas: the territorial sea and the high seas (Vicuna, 1999, p 4). Sovereignty of a coastal state over waters adjacent to the coasts of its national territory is well founded in customary international law of the sea. Concerning the fisheries, a coastal state has the exclusive powers over the management and utilization of the resource within these waters. Beyond this area are the high seas where all states enjoyed unrestricted freedom of fishing and without interference from any other states.

For centuries it was globally accepted that the high seas were free to all. This concept is traceable to the earlier writing of Hugo Grotius more than 300 years ago (Van Dyke, 1993). In his book *Mare Liberium*, the seventeenth-century diplomat and scholar argued that the seas should be free for navigation and fishing. Grotius' conception of the principle of the freedom of the high seas was founded on two basic premises: the impossibility of the sea being subject to effective occupation and the inexhaustible nature of the marine resources. According to him, natural law forbids ownership of things that seem "to have been created by nature for common use" and "can be used without loss to anyone else." From his perspective, the fish of the ocean seemed limitless, and thus fishing efforts by one nation's vessels do not interfere with the right of another nation's vessels to fish in the same region. Grotius' notion of the infinity of the marine resources

is said to be the basis of the fundamental assumption of "freedom of the seas", which persisted more or less until the 1982 Law of the Sea (Berkes, 1994).

In the days when ocean fish stocks were large and fishing fleets were small, there was no attempt for either private ownership or government regulation. Both inshore waters and the high seas were regarded as "common property". Regulation was also absent in nearly every fishery until the 19th century. Until then, the main ocean fisheries were free, open access and unregulated. The freedom of the high seas governed most of the ocean areas and most of the activities taking place thereon and therein (Cushing, 1988).

The introduction of steam to the industry in the late 19th century marked the beginning of concerns over freedom to fish and the common property characteristics of fish stocks. The steam-powered trawler proved a magnificent ship for the job of catching large quantities of fish in waters distant from its own port. By the first decade of the 20th century, overexploitation and associated issues had given rise to disputes over fishing between, amongst others, Britain, Denmark and Iceland; and the need for stock assessments and management in the open ocean.

2.2 Fishery Disputes and the Establishment of National Fishing Rights

Since fish resources are anyone's property until they have been caught, the world has had a long history of conflict between sovereign states pertaining to claims over access rights and utilization privileges of lucrative fishing grounds. Disputes over fishing among

nations with adjacent or opposite waters are as old as some principles in customary international law itself.

Fishery disputes between Britain and Holland date back to the early 17th century when England made a unilateral claim to restrict herring fishing by Dutch fishermen along the coasts of Scotland and England. England's attempt to exercise jurisdiction over Dutch fishermen met with mixed results. The Dutch, who had been fishing in these areas over a long period of time, considered this action a violation of their rights. The dispute was resolved as a result of repeated wars on the Continent, which exhausted the Dutch. Although the concept of territorial sea had not been established, the Dutch appeared to recognise that the English had some special rights to fisheries in waters within some distance from the shore.

A major conflict developed in the 19th century between the English and French fishermen over the English Channel fishery, which resulted in a convention in 1839. The ensuing treaty recognised three nautical miles as a general limit for exclusive jurisdiction by each state. The two governments further established a joint commission to develop detailed regulations over the fishery beyond their exclusive jurisdictions, which might be considered as a forerunner to the modern arrangements for international regulation of fisheries affecting high seas fishery (OECD, 1997).

Across the Atlantic Ocean, dispute erupted in 1886 when the United States attempted to enforce sealing regulations beyond its three-mile limit in the northern North Pacific. The

Americans seized some British schooners while they were fishing fur seals more than 60 miles from Alaska. The conflict between the two nations persisted until both parties agreed to submit the dispute to arbitration in 1892.

The Americans based their claim on three alternative principles. They claimed sovereignty over two-thirds of the Bering Sea, property rights over the seals that resided on their islands, and “the right to protect fur seals in the high seas in the interest of conservation”. They argued that the extermination of seals stocks on the high seas was an infringement of property rights and thus, had a right of self-defence against the acts of piracy. The British claimed freedom of the seas, denied that property rights in wild animals exist, and denied the existence of the right of fishery conservation in the high seas.

In the ensuing *Bering Sea Fur Seals Arbitration, 1892* the issue was finally settled in favour of Britain and upholding the long-standing freedom of the high seas principle (Vicuna, 1999). The tribunal agreed with Britain on all issues.

Although the tribunal upheld the rights of distant water fishing states on the high seas, it also recognises the need for conservation to prevent overexploitation and called upon participants to cooperate in its management. The 1911 Convention for the Preservation and Protection of Fur Seals between the United States, Great Britain, Russia, and Japan in Washington, D.C resulted in the banning of pelagic sealing and the establishment of a

system of compensation for refraining from sealing. This convention was the first international agreement with main emphasis on conservation.

Conservation has indeed been the cause of major international fishery disputes and the basic theme for most international fishery agreements concluded in recent years. With increased awareness about rates of stock depletion, conservation of fish stocks was often acknowledged as an important goal of management by international agreements. Bilateral and multilateral conservation conventions have been quite successful over the years in conserving important fishery resources.

Over the years various coastal states attempted to establish national fishing rights to seas superjacent to their coasts. England fought three wars with Holland over claim of sovereignty of the British sea for the protection of fisheries off its coast and of the coast of Scotland. England fixed an 8- to 10-mile boundary limit to be enforced against foreigners in 1660. As late as 1824 and 1827 the Dutch Government decreed a limit of six nautical miles for their fishermen on the British coasts. The Scandinavian countries - Denmark, Sweden and Norway - claimed four nautical miles as their territorial waters and exclusive fisheries jurisdictions in 1812.

After numerous long and acrimonious fishery disputes between the British and the French, a treaty was concluded in 1839 establishing the three-mile limit as the boundary of exclusive fishing on British coasts. After this several other conventions between the European Powers were signed. In 1882, the North Sea Convention was concluded

between France, Belgium, Holland, Sweden, Norway, Denmark and Germany accepting three nautical miles as the limit of territorial waters for fishery purposes. Thus, the limit of territorial sea and sovereign maritime jurisdiction of three nautical miles came to be applied for fisheries purposes (OECD, 1997).

2.3 Fisheries Conservation and Extended National Jurisdiction

The last quarter of the 19th century saw the development of trawl fishing and the improvements in the means of catching fish and bringing them to market. Substitution of steam power and steam vessels for sailing ships also revolutionised the fishing industry. The exhaustibility of fishery resources became all the more evident. These developments showed the inadequacy of the three-mile limit for the protection of coastal fisheries.

Increasing pressure on stocks and increased distant-water fishing effort served as incentives for states to claim exclusive rights and/or control access to stocks, and served to diminish support for the principle of freedom of the seas. In spite of the general acceptance for the three-nautical mile territorial limit, there was much dissatisfaction with the regime for which this law had established (Van Dyke, 1993). Most developing coastal states were resentful of the fact that vessels of distant fishing nations, equipped with the latest technology, were catching fish a comparatively short distance from their coasts.

As the fisheries resources in the North Sea became exhausted, these fishing vessels started going farther and farther away near other coasts in order to maintain supply (Hey, 1989). The native fishermen of smaller countries found their traditional fishing grounds invaded and exploited by foreigners, wholly unprotected by "the ordinary three-mile limit", and their own livelihood threatened. Many of the smaller countries in Europe and Russia started enforcing strictly their wider limits for the protection of their fisheries, or passing legislation prohibiting steam trawling in coastal waters (OECD, 1997).

In 1910, the government of Portugal introduced fisheries conservation legislation that prohibited fishing from steam-powered vessels within waters landward of the 100-fathom isobaths adjacent to Portugal. The offshore areas claimed by Portugal exceeded the generally accepted three-mile limit. Unfortunately, Portugal could not exercise jurisdiction over foreigners outside the limits of the territorial sea in the absence of a permissive rule of international law, or the express consent of other affected states.

Concerned that their inshore fish stocks were being depleted at a dangerous rate, fisheries authorities of Spain and Argentina suggested independently of one another that the jurisdiction of all coastal states be extended to the edge of the continental shelf. Although their proposals were not taken at the time, they were later considered by the Committee of Experts charged with preparatory work for the League of Nations Codification Conference that met at The Hague in 1930 (Johnson, 1965).

The first and most important challenge to the traditional freedom of the seas doctrine came from the United States in 1945 when President Truman issued a Proclamation on the "Policy of United States with Respect to Coastal Fisheries in Certain Areas of the High Seas" (Carroz, 1987). The chief interest in the proclamation, aside from the fact that they constitute a unilateral extension of jurisdiction, lies in the rationale used to support the claim to extended jurisdiction. The proclamation adopted conservation, a resource management-based rationale combined with an argument based on economic dependence, and coastal state needs.

The Truman Proclamation paved the way for the rush to establish fishery conservation zones for "the protection and perpetuation of fishery resources" (Wang, 1992). A flood of similar claims followed by Latin American states demanding extended jurisdiction beyond the traditionally accepted narrow belt of water from the shore. The new ocean enclosure movement began to erode the doctrine of freedom to fish; now the old legal order for freedom to fish was challenged and contested.

Mexico was the first to make such a declaration within a month of the Truman Proclamations. Panama passed a new Constitution in 1946 that contained a claim to ownership of "the aerial space and the submarine continental shelf which appertain to the national territory." In the same year, the President of Argentina issued a Decree claiming sovereignty not only over the continental shelf but also over the living resources of its superjacent waters.

Costa Rica made a claim through legislation to absolute offshore jurisdiction in 1948, but amended this in 1949. The amendment qualified the absolute rights claimed over the epicontinental sea in favour of control for the purpose of the conservation of living resources (OIC, 1990).

The 1950s saw claims by Honduras, El Salvador, and Brazil. The Honduran government proclaimed sovereignty over the continental shelf, its superjacent waters, and the resources encountered therein or there under. El Salvador defined its national territory as including marine and submarine areas 200 nautical miles from the coast. Brazil annexed the continental shelf by Decree of November 1950, reserving the right to regulate the "utilisation and exploration or natural products of that part of the national territory." In 1951, Ecuador issued a Decree relating to submarine and fisheries jurisdiction, which claimed ownership of the shelf and its submarine resources, as well as protection of the fishery within that area. It also fixed the limits of the territorial sea at 12 nautical miles (Brown, 1994).

For the countries of the South Pacific where there was no shelf to be reckoned with, the alternative was to create a "maritime zone," or a 200-mile belt around the whole area.

The first international instrument to proclaim a 200-mile limit came into being in 1952 when three Latin American countries that border the South Pacific (Chile, Ecuador and Peru) signed the Santiago Declaration. The main driving force behind this Declaration was the desire of those states to develop the resources of their coastal waters. The three

governments "proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast." By 1958, at least twenty-seven of the seventy-three independent coastal states had claimed specific breadths of territorial sea in excess of the so-called traditional 3-mile limit. These claims ranged between 5, 6, 12 and 200 miles (Van Dyke, 1993).

To bring order over the legality of these claims, the United Nations organized two conferences in 1958 and 1960. Although the Conventions accepted coastal states' sovereign and exclusive jurisdiction over their continental shelves, the principles embodied in the Santiago Declaration garnered little support and left Chile, Ecuador and Peru in an isolated position (Carroz, 1987).

Following the failure of the 1960 United Nations Conference, Iceland resorted to unilateral action to deal with fishery problems on the high seas superjacent to its territorial seas by openly extending its fisheries jurisdiction to 12 nautical miles and announced that its gunboats would cut the fishing gear of any vessels operating therein without permission. Iceland subsequently extended this limit to 50 nautical miles and then to 200 nautical miles (OIC, 1990).

Unilateral claims by coastal states over expanded exclusive fishery jurisdiction beyond the traditional 3 nautical miles limit kept mounting. Since there was no international agreement on the extent of coastal state offshore jurisdiction, the number of fishing

incidents and vessel seizures followed by retaliation increased dramatically worldwide (Wang, 1992).

2.4 Fisheries Regime under UNCLOS

After 15 years of negotiations UNCLOS was finally adopted in 1982. The Convention is important in a number of major aspects. It formally established a legal regime governing activities on, over and under the world's oceans. It brought together the international law covering the oceans, from territorial waters (which was set at 12 nautical miles), to the high seas, as well as the seabed. The Convention formally recognised the rights of coastal states to exploit and regulate access to and conservation of marine fisheries resources in extended areas off their coasts. Based on the concept of Exclusive Economic Zone (EEZ), the coastal states are entitled to exercise sovereign rights over marine fisheries resources up to 200 nautical miles from the baselines from which their territorial sea is measured. The 1982 UNCLOS essentially provides the coastal states with full property rights to the fishery resources within their own EEZs (UN, Article 56 (1) (a)).

As stated, in the EEZ, the coastal states have the full powers to determine the total allowable catch (TAC) available for exploitation, decide on any surplus that other states may access, and the right to ensure compliance by foreign vessels with the laws and regulations relating to fishing within the EEZs. These include the express powers to board, inspect, and arrest any vessel, and to initiate judicial proceedings (Article. 73 (1)). For these rights, the Convention entrusts the coastal states with the obligation to ensure

that those fish stocks within their EEZs are not endangered by over-exploitation (UN, Article 61).

The powers of the coastal states within their EEZs are absolute. They have the right to refuse submission to the compulsory settlement procedures of any dispute relating to the exercise of their sovereign rights or discretionary powers for determining allowable catch, harvesting capacity, allocation of surpluses, or the terms and conditions of fishing activities established under their laws and regulations (Article. 297(3) (a)). However, beyond the EEZ, coastal states have been, as a matter of international law, virtually powerless to unilaterally deal with non-national fishing activity; even where that activity creates detrimental effects on the living resources within the coastal states' waters. Hence, distant water fishing nations continue to exploit resources beyond coastal states' jurisdiction according to the freedom of the seas (UN, Article 87). Allocation decisions are made in accordance with the principle that whoever could harvest the stocks could take them (Churchill & Lowe, 1988).

In reconciling the rights of nations to fish on the high seas with the rights of coastal states, the Convention imposes a number of specific obligations on states fishing on the high seas. Included, is the duty of the relevant states to cooperate in the effective management and conservation of high seas fishery resources, making use, where appropriate, of international fishery organizations (UN, Articles 117 and 118). The Convention also cautions the relevant states that whatever conservation measures

adopted, they should not discriminate in any form or in fact against the fishers of any state (Article 119 (3)).

The 1982 UNCLOS conveys the impression that most fish stocks confine themselves to the EEZ of a single coastal state. This is very far from being the case. Fish know nothing about man-made divisions and delimitations of ocean spaces. They move about with the whims of nature and many migrate between the EEZs of two or more states and/or the waters beyond (Applebaum, 1993). Whilst coastal states have the management responsibility and enforcement rights to protect the fisheries resources within their EEZs, those species that migrate beyond the EEZs during their life cycle or seasonal patterns are not subjected to the coastal states' enforceable management regimes. As a consequence, over-exploitation and over-capitalisation prevailed in many fisheries (Munro, 1996).

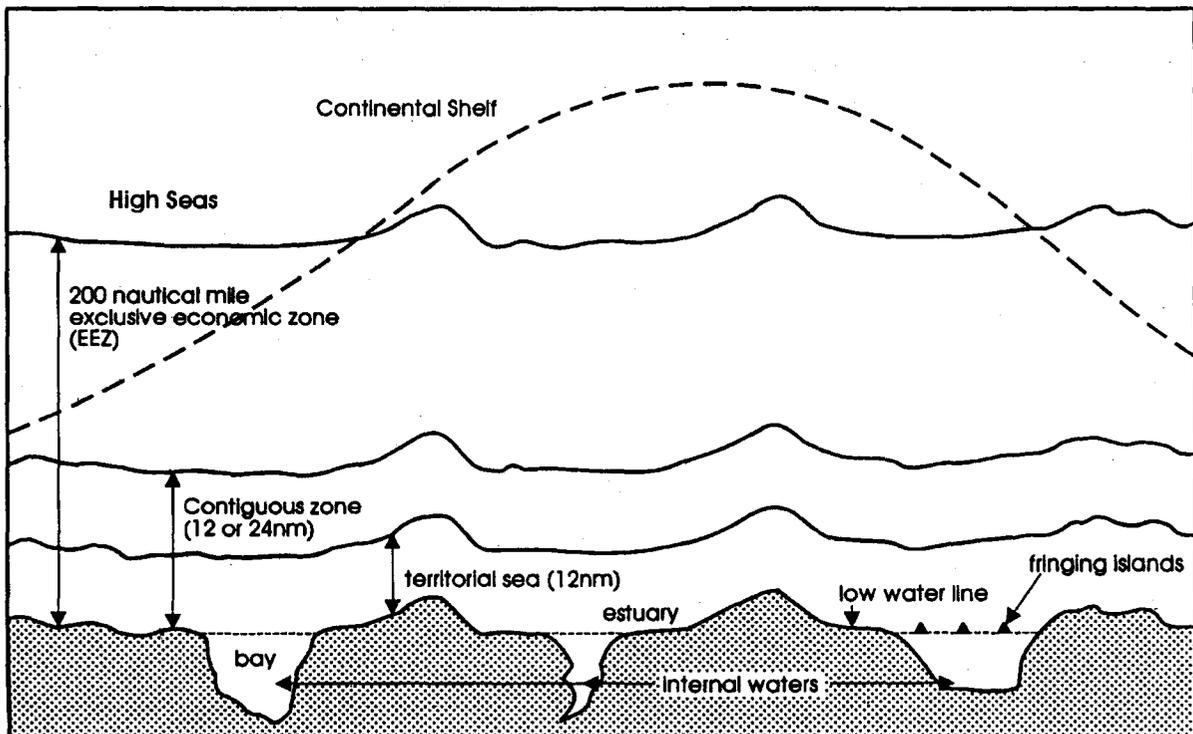
With respect to straddling/transboundary stocks, the Convention imposes upon DWF states the obligations to conserve the stocks; and to cooperate with the adjacent coastal state(s) who are afforded special rights over these stocks (Articles 116, 63 (2), 67). Unfortunately, the Convention does not compel the relevant states to agree on conservation measures and provides no enforcement rights enabling coastal states to protect these stocks in the area beyond and adjacent to their fisheries zone. Furthermore, there is no compulsory or independent dispute mechanism provided for in the text of the Convention to make binding decisions, and what to do about non-complying states (Meltzer, 1994).

The 1982 UNCLOS still acknowledges the right of access to the fisheries by all states on the high seas. However, the traditional freedom of fishing is no longer absolute and unrestricted. Apart from the obligations to conserve and cooperate, the Convention requires states whose nationals fish on the high seas to take the responsibility to prevent harm to the shared resources and to consider the interests of other states fishing in the area (Floit, 1993).

In a sense UNCLOS evaded the issue of the powers of the coastal states to enact conservation measures in the high seas. It was argued that any extension of these powers beyond the EEZs would amount to a violation of the freedom of the high seas. Instead, it promotes the principle of solidarity with respect to high seas fishing. Accordingly, the right of every state to fish on the high seas is limited by similar rights of other states and that a state must not use the freedom of fishing in a way which may hinder or obstruct the exercise of the fishing rights of third states (Yturriaga, 1997).

By virtue of UNCLOS, nearly all fishing grounds which contribute about 99 percent of the world catch have been included within the limits of the area of extended jurisdiction of coastal states. Such “nationalization” of fish stocks has had an effect only on DWF states, and not the stock itself. The establishment of the EEZs has resulted in the relocation of foreign fishing fleets activities from their traditional fishing grounds within the coastal zones to the high seas.

While the Convention focuses much of its effort on the regulation of the resources within the EEZs, high seas fisheries were not given much attention. With only 10 percent of the world's fishable capture fisheries outside national jurisdictions, it was believed by the drafters of the 1982 UNCLOS at the time that the management of fisheries on the high seas were of minor importance, or so it seemed. The ensuing decade was to demonstrate that this lack of concern was misplaced.



Source: Couper, 1983.

FIGURE 2: MARITIME ZONES UNDER THE 1982 UNCLOS

2.5 Regional Approach to Fisheries Management

When UNCLOS introduced the EEZs in 1982, a number of important developments were not anticipated. Namely;

- (a) an increase in DWF fleet capacity that is capable of operating beyond the 200-mile limits,
- (b) the maintained or increased payment of subsidies by relevant states to support the operations of overcapitalized fleets both within the EEZs and on the high seas; and
- (c) technological advancements in fishing gear and methods.

The overall impact of these unanticipated fleet related developments has been the increase in fishing effort and pressure on the high seas portion of the stocks. Intensified fishing activities on the high seas by DWF fleets have led to a decline or depletion of fish stocks in many areas; including the Northwest Atlantic, the Southwest Atlantic, the Northeast Pacific, the East Central and Southwest Pacific. A number of these high seas stocks were not managed by international fisheries organizations. Some fish stocks, even though under a management fisheries regime, were being prosecuted by fleets from non-participating states. Others, were being targeted by fleets of participating states opting not to abide by agreed upon management measures (FAO, 1994).

International law has always relied on the flag states to regulate the activities of their vessels on the high seas, including fishing (UN, Art. 94). However, few flag states have

implemented legislation governing the rights and responsibilities of their vessels on the high seas. Many do not have the resources to undertake the responsibilities, while others simply are not willing to fulfil their obligations. Where states have enacted controls and become parties to international fisheries organizations, some vessel owners re-flagged their vessels' nationality to a non-member country of the relevant organization to circumvent any management measures. Recent study by Gianni and Simpson (2005) shows that close to 10% of the capacity of the global fleet of all large-scale fishing vessels (≥ 24 m) on the Lloyd's database as measured in Gross Tonnage, were registered in countries that operate open registries or "flags of convenience" (FOCs). Belize, Honduras, Panama and St. Vincent and the Grenadines accounted for 75% or more of the large-scale fishing vessels flying the flag of the FOC countries.

Table 1.1: Top 14 Countries with Open Registries (FOCs)
Source: Lloyd's Register of Ships 2005

Flag State	Vessels Registered In Flag State	As % All FOC Vessels	Total Flag Gross Tonnage	Average Tonnage Per Vessel	As % All FOC Gross Tonnage	Average Vessel Age
Belize	241	19.0%	259,119	1075.2	26.9%	22
Bolivia	16	1.3%	16,824	1051.5	1.7%	26
Cambodia	47	3.7%	27,773	590.9	2.9%	27
Cyprus	27	2.1%	66,483	2462.3	6.9%	22
Equatorial Guinea	39	3.1%	21,636	554.8	2.2%	22
Georgia	60	4.7%	45,756	762.6	4.7%	22
Honduras	416	32.8%	158,842	381.8	16.5%	24
Marshall Islands	7	0.6%	11,434	1633.4	1.2%	17
Mauritius	24	1.9%	9,632	401.3	1.0%	30
Netherlands Antilles	20	1.6%	8,294	414.7	0.9%	24
Panama	222	17.5%	134,286	604.9	13.9%	30
St. Vincent and the Grenadines	74	5.8%	97,893	1322.9	10.2%	26
Sierra Leone	27	2.1%	8,679	321.4	0.9%	29
Vanuatu	47	3.7%	118,298	2517	12.3%	11

Adapted from Gianni & Simpson, 2005

Table 1.2: Fishing Vessels ≥ 24 metres Registered to All Countries.
Source: Lloyd's Register of Ships 2005

Flag State	Number of Fishing Vessels	Number as % of Total	Gross Tonnage of Vessels	Tonnage as % of Total	Average Gross Tonnage Age	Average
All Countries	19482		10,275,073		527.4	25
14 FOC Countries	1267	6.5%	963,313	9.4%	760.3	25
Flag Unknown	1656	8.5%	836,048	8.1%	504.9	28

Adapted from Gianni & Simpson, 2005

The impact of destructive fishing practices on the high seas resources by these unregulated fishing vessels, particularly those flying the flags of convenience, is well documented in the literature. Unfortunately, the long-standing principle of freedom of the high seas as codified in the 1982 UNCLOS prohibits non-flag states from interfering with the fishing operation of vessels from other nationals. The re-flagging phenomena coupled with increasing international concerns over the conservation and management of the living resources of the high seas has led to unprecedented pressure to develop better regulation of fishing vessels and their high seas operation. Failure of UNCLOS to address, in any meaningful way, the effective management of the fisheries on the high seas, has given rise to the call by the international community for some mechanisms to regulate and co-ordinate the regulatory activities of DWF fleets.

The UN General Assembly responded by convening the Conference on Straddling and Highly Migratory Fish Stocks, which was completed and opened for signatures in December 1995. The 1995 Fish Stocks Agreement, formally known as the "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management Straddling

Fish Stocks and Highly Migratory Fish Stocks” (UNFA) entered into force on 11 December 2001. Although the Agreement applies primarily to straddling and highly migratory fish stocks on the high seas, its broad acceptance and application is evidenced by the reinforcement of other international instruments, implementation at the regional level, and to some extent by state practice within areas of national jurisdiction (Swan, 2004).

The UNFA in no way replaces any part of the 1982 UNCLOS. Rather, it strengthens and specifies the duty under international law for states with respect to all aspects of high seas fisheries. Under the Agreement, states must adopt the principles of precautionary approach to fisheries management and take conservation measures such as:

- (a) assessing and managing species in the same ecosystem and species associated with or dependent on the target species to protect biodiversity;
- (b) addressing overfishing and excess fishing capacity; and
- (c) monitoring and controlling fisheries. (Rigg et al, 2003).

At the heart of the Fish Stocks Agreement is the duty for the relevant states to cooperate. Bearing this in mind, the Agreement includes detailed provisions on the establishment and operation of subregional and regional fisheries management organizations (RFMOs). The Agreement provides RFMOs with the responsibility for regulating and enforcing sustainable fishing practices within their regulatory areas. Where a competent RFMO exist, the Agreement calls upon states to either become members of the body, or they should agree to apply the conservation measures established by such organization.

Access to the fishing grounds administered by these RFMOs is limited to those states agreeing to adhere to the conservation and management measures adopted by the organizations concerned (UNFA, Art. 17).

One of the most important areas of concern that have plagued the effectiveness of any international conservation measures has been the unregulated fishing on the high seas by vessels under the protection and cover of Flags of Convenience. Here, the Agreement specifies the duties of the flag states with respect to their vessels fishing on the high seas. Accordingly, states are not permitted to authorize the use of their flag to vessels fishing on the high seas unless they are capable of effectively exercising responsibility over such vessels. Moreover, in accordance with Article 19(1), the flag state must ensure compliance by its vessels with regional conservation measures (Lugten, 1999).

The Fish Stocks Agreement also breaks new ground in international law by empowering any member state the right to board and inspect vessels of other states to ensure compliance with regional agreement, even where the flag state is not a member of the relevant regional fishery body (UNFA, Art. 21). This is a departure from the customary maritime law that provides a flag state with the exclusive jurisdictions over its vessels on the high seas. Thus, the inspecting state may secure evidence and notify the flag state of any violation committed by its vessel. Failure to respond or take appropriate action by the flag state against the vessel concerned, where appropriate, the Agreement permits the inspecting state, where appropriate; to direct the vessel to the nearest port for further action (UNFA, Art. 21(8)).

The Agreement also recognizes the right of the port state "to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and measures" (UNFA, Art. 23). These include inspections and prohibitions of landings and transshipments. Therefore, when a fishing vessel voluntarily enters a port, the port state may inspect documents, fishing gear, and any catch on board the vessel in order to ensure compliance with subregional, regional, and global conservation and management measures.

One of the important innovations of the Fish Stocks Agreement is the provision for peaceful dispute settlements. The Agreement provides for the compulsory and legally binding settlement by a third party. states can choose from options established under the UNCLOS, which include appeal to the International Tribunal on Law of the Sea, the International Court of Justice or an ad hoc tribunal set up to arbitrate particular disputes.

3.0 INTERNATIONAL COOPERATION IN FISHERIES MANAGEMENT

3.1 Exclusive Economic Zones and Flag State Sovereignty

The 1982 UNCLOS defines the interests of both coastal states and DWF states into two discrete management areas. Inside the 200 nautical miles EEZ, the Convention provides the coastal states with the sovereign rights to manage and conserve the living resources therein (UN, Article 61). Outside the EEZ of coastal states, the living resources are open to free access to all states under the freedom of fishing on the high seas (Article 87). With respect to those living resources that are found on the high seas and also in the EEZ, the Convention takes the approach of promoting cooperation between the coastal states and DWF states in managing these resources. Accordingly, this cooperation may be effected through bilateral or other agreements or may take place through appropriate subregional and regional organizations (UN, Article 63 (2)).

The 1982 UNCLOS envisages cooperation between relevant states as the mechanism for the conservation of shared living resources in the high seas. It encourages the coastal states and DWF states to agree upon measures necessary for the conservation of these stocks. Additionally, it requires states involved in the exploitation of high seas to cooperate in the management and conservation of these resources (Brown, 1994). Articles 61 and 119 of the Convention elaborate on the duty to cooperate by specifically providing for cooperation through competent subregional, regional or global organizations. In fact,

this notion of international cooperation is the fundamental philosophy underpinning the existence of regional fisheries organizations (RFOs).

Although UNCLOS does not provide for the establishment of new international organisations as vehicles to facilitate such cooperation, it does however, rely on existing organisations or organisations to be created in the future to deal with all aspects of conservation of living resources where international cooperation is essential (Brown, 1994).

3.2 Emergence of Regional Fisheries Management Organizations (RFMOs)

International cooperation first became important when it was recognised that the shared stocks were being depleted (Cushing, 1988). Decreasing catch per unit effort observed by fishers led to the establishment of the first recorded RFMO, the International Council for the Exploration of the Sea (ICES), in Copenhagen in 1902. It was the earliest attempt at international marine fisheries cooperation in the Atlantic Ocean.

ICES was created by states interested in the fishery resources of the Atlantic in response to the problems which arose from the expansion of fishing operations in the North Sea and adjacent waters. It was brought about as a result of the emergence of large, mechanised fishing fleets in Northern European countries after 1850. The primary function of ICES has been to “encourage and to coordinate the scientific research of its member states.” Only occasionally did it conduct its own investigations (Hey, 1989).

The Council was for a long time a somewhat informal organised body, which could function efficiently through its close contacts with the scientific community in the member states. After World War II, however, it became clear that a more formal organisation was desirable and a new Convention for ICES was signed in Copenhagen, Denmark, on 12 September 1964. It entered into force on 22 July 1968. Article 1 of the new Convention identifies the Council's principal functions as:

- (1) to promote and encourage research and investigations for the study of the sea, particularly related to the living resources thereof;
- (2) to draw up programmes required for this purpose and to organize, in agreement with the Contracting Parties, such research and investigations as may appear necessary;
- (3) to publish the results and otherwise disseminate the results of research and investigations carried out under its auspices or to encourage the publications thereof (Lugten, 1999)

Although the organisation is concerned with the Atlantic Ocean, it has been particularly concerned with the North Atlantic. The Council has been a very successful organisation and has made a most impressive contribution to marine science (OECD, 1997).

The success of ICES led to the formation of other RFOs elsewhere. As with ICES, these RFOs concentrated their efforts on conservation of fishery resources by generating scientific information and promoting scientific cooperation. In 1919 an International

Commission for the Scientific Exploration of the Mediterranean Sea was established in Madrid. A second organisation inspired by ICES was the North American Council on Fisheries Organisation, which was founded in 1920 by Canada, Newfoundland and the United States. Although this organisation was discontinued in 1938, nevertheless, it laid the foundation for the International Commission for the Northwest Atlantic Fisheries (ICNAF) (Koers, 1973).

At present there are more than 30 regional and sub-regional fishery bodies or arrangements that have been established globally with diverse range of mandates, functions and structures. Most of these bodies were formed in the post World War II, United Nations era. Eleven of them signed under the auspices of the FAO Constitution. The rest were created under international agreements between three or more contracting parties who see common gains in cooperating to overcome collective-action problems related to the use of regional fisheries (Swan, 2004).

The fundamental difference between the FAO and Non-FAO RFOs is in their membership. The admissions of non-coastal states to several non-FAO bodies are restricted. FAO bodies, however, are open to all members without exclusion. Most FAO bodies operate in tropical and sub-tropical areas, and, with the exception of the European Inland Fishery Advisory Commission (EIFAC), the majority of members are developing states (Lugten, 1999).

These regional and international organizations have nothing to do with the extension of coastal states' jurisdiction; rather they are expected to play a more constructive and effective role in the conservation and management of high seas fishery. They are intended to address the concerns of fisheries management of most of the high seas fishing grounds and, in some cases, with specific species (OECD, 1997).

3.3 The Role of Regional Fisheries Organizations

According to Sydnes (2002) regional fisheries organizations (RFOs) are “functional bodies established by states which are formalised by agreements establishing principles, rules and procedures for cooperation”. Their functions vary from dealing with single species or a group of closely related species, to those based more on a region and covering a whole range of species within their areas of competence. Some have regulatory functions while others have an advisory role related to fishery management issues. There are other fishery organizations that do not have conservation and management functions but provide scientific advice relating to conservation and management of the living resources.

Scientific research fishery organizations are established to facilitate cooperation through conducting and coordinating marine research and providing information and advice. Regional coordination and development organizations focus on the development of the regional fishing industry and harmonisation of national policies. They are, most often, based on the common interests of the member-countries and achieve their goals through

policy coordination and joint programs. Regional fisheries management organizations, manage regional fisheries in the traditional sense by collecting and assessing scientific data, setting regulatory measures and establishing enforcement measures. Such organizations often have an underlying conflict of interest between coastal states and DWF states.

In the early stages of their existence, the focus for decision-making with most RFOs was how best to serve as a forum for fisheries management rather than as a fisheries management body. Their mandates were identified as a research arm and advisor rather than decision-maker and enforcer. By mid-century, however, the realization that some fish stocks were being fished to the maximum limit and possibly beyond, prompted many RFOs to re-evaluate their approach. Some were forced to shift their effort from rudimentary fisheries management systems, such as mesh sizes and closed seasons, and adopt more intense management measures, such as catch quotas and joint inspection for their members. Unfortunately, these new measures only extended as far as the mandate of the relevant RFOs allowed and as a result international conflicts and catastrophic overfishing still prevail.

Following the EEZ regime under the 1982 UNCLOS, the organizational roles and functions of many RFOs were transformed. Although they would maintain their essential functions as: fora for international cooperation; vehicles for research, analysis, and data repository and exchange; and advisors on fisheries management, in accordance with their

mandates, a suite of new activities envisaged by the Convention prompted the RFOs to review and amend their conventions. Swan (2004) listed the activities to include:

- protecting stocks associated with harvested stocks from depletion;
- conserving stocks outside 200 miles;
- giving advice to coastal states on the conservation of stocks inside the 200 mile zone;
- pursuit of compulsory dispute settlement options;
- providing coastal states with all relevant information regarding fishing activities in high seas areas adjacent to their exclusive economic zone;
- transmission to coastal states of appropriate minimum standards;
- providing a conduit through which coastal states can fulfil their obligation to give due notice of their relevant conservation and management laws and regulations and make information available on the outer limits of their exclusive economic zones;
- considering stricter regulations for marine mammals than those required for other species.

As a consequence of these new responsibilities, many established RFOs underwent major changes and new organizations with more modern mandates established.

3.4 Canada's Participation in Fisheries Management Organizations (RFMOs)

3.4.1 The International Commission for the Conservation of Atlantic Tunas (ICCAT)

The International Convention for the Conservation of Atlantic Tunas (Atlantic Tuna Convention) was signed in Rio de Janeiro, Brazil, in 1966 and entered into force in 1969. The Convention establishes the International Commission for the Conservation of Atlantic Tunas (ICCAT) as the entity responsible for the regulation of the tuna fisheries in all waters of the Atlantic Ocean, including adjacent seas. ICCAT's focus originally was limited to tuna and tuna-like fishes but later includes such other species of fishes exploited in tuna fishing in the Convention Area that are not under investigation by another international organization. Currently there are 30 species that are of direct concern to ICCAT (<http://www.iccat.es>).

ICCAT's primary goal is to ensure the maintenance of Atlantic tuna stocks at levels that will permit the maximum catch for food and other purposes. It is also responsible for coordinating global research on the status of Atlantic tuna and tuna-like species, and for developing regulatory harvest proposals for consideration of the contracting parties

Membership to ICCAT is open to any state that is a member of the United Nations (UN) or of any specialized UN agency, or any inter-governmental economic integration organization constituted by states that have transferred to it competence over the matters

governed by the ICCAT Convention. Instruments of ratification, approval, or adherence may be deposited with the Director-General of the Food and Agriculture Organization of the United Nations (FAO), and membership is effective on the date of such deposit.

Currently there are 41 contracting parties to ICCAT that range from North, South and Central America to Europe and Africa, as well as DWFN in Asia. Canada has been an active member of the organization since it was established in 1969.

ICCAT has no regulatory or enforcement powers, it can only make recommendations. Coastal states may or may not accept and adopt these regulations in their EEZs or territorial seas. These recommendations are also subject to the objection procedure. There are no dispute settlement procedures in the ICCAT Convention. However, ICCAT has allowed the use of trade sanctions to enforce its conservation and management measures on Atlantic tuna (Hey, 1989).

3.4.2 The Inter-American Tropical Tuna Commission (IATTC)

The Convention for the establishment of the Inter-American Tropical Tuna Convention (IATTC) was signed in 1949 and entered into force in 1950. The objective of the Commission is to conserve yellowfin tuna, skipjack tuna, fish commonly used as bait in the tuna fishery, and other kinds of fish taken by tuna fishing vessels in the Eastern Pacific. Geographically, the Convention covers the Eastern Pacific Ocean including the

high seas and areas under sovereignty of coastal states parties to the Convention. The Convention is also applicable to all states that participate in the fishery in the region (<http://www.iattc.org>).

The IATTC conducts its own scientific research, cooperates with national research institutions and with other international fisheries organisations when conducting its research. The Commission makes recommendations on annual TAC for yellowfin tuna, the only species at present that is believed to require regulatory measures (Hey, 1989).

The IATTC also serves as the Secretariat for the Agreement on the International Dolphin Conservation Program, whose principal objective is to reduce and strictly regulate accidental dolphin mortality, which occurs in the purse seine fisheries for tuna.

Membership to the IATTC is open to any state whose nationals participate in fisheries in the IATTC Convention Area, provided that the Contracting Parties have given their unanimous consent. There are currently 15 contracting parties to the IATTC. Canada, China, the EU, Honduras and Chinese Taipei are Cooperating Non-Parties or Cooperating Fishing Entities to the organization.

The IATTC has no enforcement powers and policing activities are carried out by individual states. All decisions and resolutions of the Convention are taken by unanimous approval through votes of all members to prevent the occurrence of disputes and objections. There is no formal mechanism for the settlement of disputes in the IATTC Convention (Swan, 2004).

3.4.3 The Northwest Atlantic Fisheries Organisation (NAFO)

The Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries (Northwest Atlantic Fisheries Convention) entered into force in 1979 replacing the International Convention for the Northwest Atlantic Fisheries (ICNAF). This Convention established the Northwest Atlantic Fisheries Organisation (NAFO) as the intergovernmental body responsible for fisheries conservation and management of all fishery resources with the exceptions of salmon, tuna, marlin, cetaceans and sedentary species beyond the coastal states' EEZs in the NW Atlantic Ocean. The primary objective of NAFO is to promote, through consultation and co-operation, the optimum utilisation, rational management and conservation of the fishery resources in the Convention area (OIC, 1990).

NAFO has a General Council, a Scientific Council and a Fisheries Commission. The General Council supervises and co-ordinates the internal affairs and external relations of the Organisation, and determines the membership of the Fisheries Commission. The Scientific Council is the organ that provides the forum for consultation among the contracting parties with respect to issues relating to scientific research. The Fisheries Commission is responsible for the management and conservation of the fishery resources in the Regulatory Area. Any state may accede to the NAFO Convention and become a member of the General Council and the Scientific Council. Membership to the Fisheries Commission, however, is decided by the General Council and is subject to approval of the contracting parties to the Convention (Hey, 1989).

Adoption of proposals is by a majority vote provided that a quorum of two-thirds of the members of the Commission present. Subject to an opting-out procedure, the proposals of the Commission become binding upon the contracting parties after a lapse of a certain period of time. If a contracting party objects to a proposal within a certain period of time it is not bound by the proposal. There are no formal mechanisms for dispute settlement in the Convention (OIC, 1990).

3.4.4 The Northeast Atlantic Fisheries Commission (NEAFC)

Regional cooperation with respect to the exploitation of the living resources of the Northeast Atlantic is regulated in the Convention on Future Multilateral Cooperation in the Northeast Atlantic Fisheries (Northeast Atlantic Fisheries Convention) of 1980 that took effect in 1982. The Convention area covers the whole of the NE Atlantic; southern parts of the Baltic Sea and the Mediterranean Sea, however, its regulatory powers only apply to areas outside coastal states' EEZs (OECD, 1997).

The Convention establishes the Northeast Atlantic Fisheries Commission (NEAFC) whose main functions are to further the conservation and optimum utilisation of all fishery resources of the Convention Area, except marine mammals, sedentary species and, insofar as they are dealt with by other international agreements, highly migratory species and anadromous stocks. The NEAFC also provides a forum for consultation and exchange of information on the state of the fisheries resources and on management policies (Hey, 1989)

Any state, except a member state of the European Community, can become a member of the NEAFC subject to the approval of three-fourths of all the Contracting Parties. Canada is not a contracting member to the NEAFC. As a cooperating non-member, Canada attends NEAFC meetings only as an observer.

The NEAFC makes its recommendations based on scientific advice from ICES, which are adopted if majority vote approves. However, recommendations formulated by NEAFC are also subject to the objection procedure. There are no mechanisms for resolving differences between Contracting Parties provided for in the Convention (Swan 2004). However, at their 2004 annual meeting, the Commission unanimously adopted amendments to the Convention establishing fast track dispute settlement mechanism. Although ratification is expected in due course, Parties have agreed to immediately make use of this fast track mechanism on a voluntary basis (Meltzer, 2005).

3.4.5 The International Pacific Halibut Commission (IPHC)

This is a bilateral agreement concerning the protection of Pacific halibut, which was signed by the United States and Canada in 1923 and entered into force in 1924. The Convention for the Preservation of the Halibut Fishery of the Northern Pacific Including the Bering Sea calls for both countries to share and jointly regulate the commercial halibut fisheries in the Pacific. This Convention establishes the International Fisheries Commission (IFC), which was renamed the International Pacific Halibut Commission

(IPHC) in 1953 when the two nations signed a new Convention for the Preservation of the Halibut Fishery of the Northern Pacific and Bering Sea (Koers, 1973).

Throughout its history, the Halibut Commission has been responsible not only for investigating the stocks of halibut and the halibut fishery, but also for making proposals to the two member states with regard to the regulation of this fishery. Following extended jurisdiction, the Commission's mandate was changed by the 1979 Protocol to the Halibut Convention of 1953. The 1979 Protocol called for managing the halibut resource on an optimum yield rather than on the maximum sustainable yield basis as it had done in the past and also restricts each party to exploit halibut only in its jurisdiction (Hey, 1989).

The IPHC is one of the few international fisheries organisations that employ its own independent staff that conducts the necessary investigations and submits regulatory proposals to the Commission. The IPHC can be considered one of the most successful regulatory fishery bodies. It has strong ties with the fishing industry and as a result measures adopted by the IPHC are readily observed by agencies and stakeholder groups of both the United States and Canada. The Commission has been able to maintain a stable fishery and prevent stock and environmental problems that have plagued other parts of the world. After 80 years of IPHC management and stewardship, the yield from the resource is presently at record high levels. In 2003, the commercial fishery landed 33176 tonnes (73.141 million pounds) with an ex-vessel value of over \$200 million. (<http://www.iphc.washington.edu>)

3.4.6. Pacific Salmon Commission (PSC)

The decline of the Fraser River salmon fisheries after 1913 convinced Canada and the United States of the need for joint investigations into the matter. The two countries drafted several agreements between 1920 and 1930 that were not ratified. Finally, on 28 July 1937 a Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery of the Fraser River system entered into force (Koers, 1973). The Convention, which was originally signed in 1930, establishes the International Pacific Salmon Fisheries Commission whose initial responsibility was to investigate the causes for the post-1913 decline of the Fraser River sockeye salmon fishery. Over the years the powers of this Commission were broadened. Since 1946, the Commission made regulatory proposals to its two member states designed: (1) to ensure an adequate escapement of salmon to the spawning grounds; and (2) to divide the allowable catch equally between the fishermen of the two countries. Since 1957, the Commission is also responsible for pink salmon (Hey, 1989)

The Pacific Salmon Commission differs in many respects from other international fisheries organisations. Apart from its explicit responsibility of allocating the catch between the fishermen of the two member states, it also has the unique power to make certain decisions that are directly binding on the fishermen. The Commission also differs in that it is almost exclusively concerned with the regulation of fisheries in internal and territorial waters.

The Salmon Commission is also one of the few fisheries bodies with an independent international research staff. It has been quite successful in rebuilding the stocks of the Fraser River sockeye salmon (OECD, 1997).

3.5 Other International Fisheries Organisations

While the aforementioned organisations are relevant to Canada's interest for the management of shared fisheries resources, there are at least over 60 regional and international fisheries organisations currently in force. Each, with their own different mandates and structures, provide a venue for cooperation among relevant sovereign states in the conservation and management of shared fish stocks (See Appendix 2 for list of RFMOs).

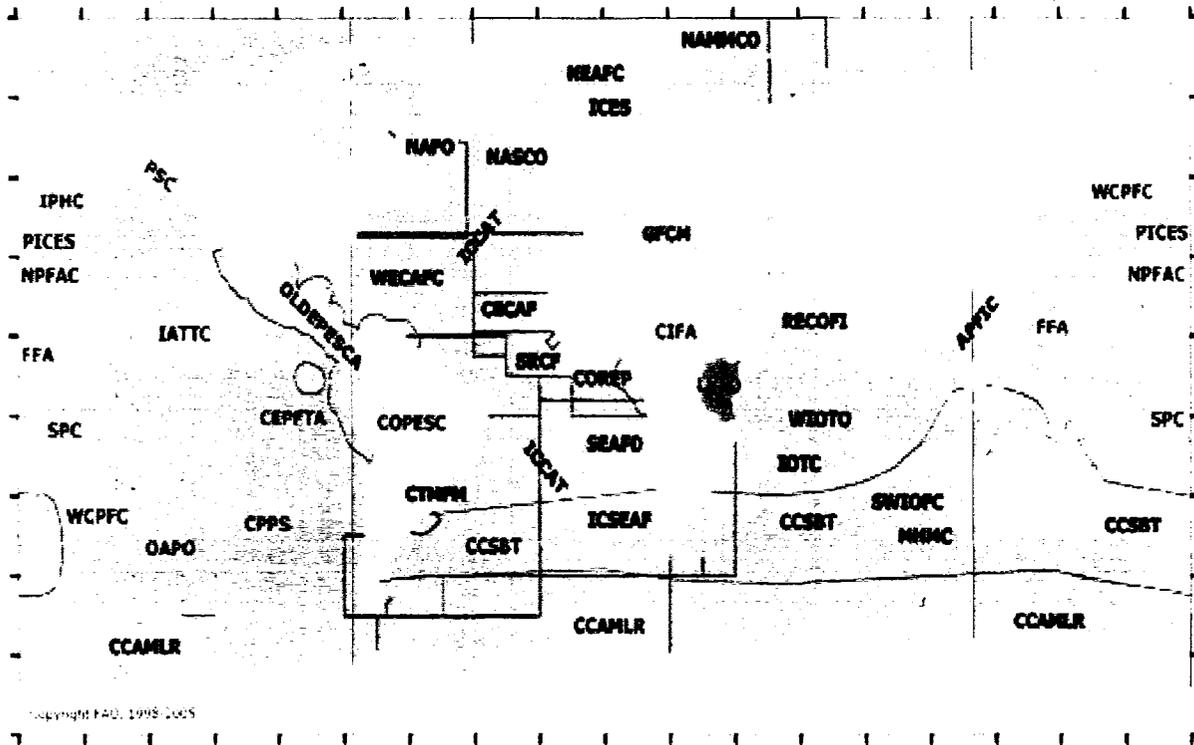


Figure 3: Regional Fishery Bodies – World Ocean Coverage
<http://www.fao.org/fi/body/rfb/index.htm> (15 Oct 2005)

4.0 IMPLEMENTING INTERNATIONAL AND REGIONAL AGREEMENTS

4.1 1982 UNCLOS and the High Seas Fish Stocks

At the conclusion of UNCLOS in 1982, it had been assumed, implicitly at least, that the adoption of extended jurisdiction in international law would lead to a significant improvement in the way in which the world's marine fisheries resources were managed and utilized. The new legal regime is extremely important in the context of fisheries conservation because many commercially viable fish stocks located within the 200 miles from the coastal baselines are now under the jurisdiction of coastal states. Thus, with 90 percent of the world's fishery resources encompassed by the newly established EEZs, it was believed then what was left over seemed of little consequence.

At the outset, it appears that extended jurisdiction would put an end to the indiscriminate fishing activities and over-exploitation of the global fish stocks. Unfortunately, despite its magnanimous principles of conservation, the 1982 UNCLOS could not change the fact that by the time it came into force in 1994, some 70% of the world's conventional species were fully exploited, overexploited, depleted, or rebuilding from a depleted state. Virtually all major areas of the world's oceans have been affected but some of the hardest hit regions have been in the Atlantic Ocean, particularly the northwest and southeast, where catches have fallen, by over 40 and 50% respectively, from their peak in 1973 (FAO, 1999).

The issue was particularly problematic with regard to high seas fish stocks, straddling fish stocks and highly migratory fish stocks, where the 1982 Convention provided an inadequate legal and management regime. These stocks are vulnerable to being overfished because they continue to suffer the pre-UNCLOS consequences once outside the EEZ. Actions taken by coastal states within their jurisdictions to provide for conservation of these stocks are rendered ineffective by fishing activities conducted by other states outside the EEZs. FAO (1995) report shows that unabated overfishing of these stocks on the high seas has threatened the sustainability of the fisheries in many regions of the globe:

- pollock fishery in the “Donut Hole” of the Bering Sea and the “Peanut Hole” of the Sea of Okhotsk;
- orange roughy fishery on the Challenger Plateau in the high seas off the coast of New Zealand;
- northern cod, American plaice, yellow tail and redfish on the Canadian Grand Banks in the Northwest Atlantic;
- hake, southern blue whiting and squid off Argentina’s Patagonian Shelf;
- jack mackerel off the coast of Chile and Peru;
- cod in the Barents Sea “Loop Hole” off the coast of Norway; and
- tuna, dolphin and shark fisheries in the South Pacific Ocean, beyond the limits of national jurisdiction.

The adoption of the 1982 UNCLOS does not significantly affect the centuries-old practices of freely exploiting the ocean living resources as anticipated. The redistribution

of marine resources under the new EEZ regime essentially forces many DWF fleets to seek new fishing grounds beyond coastal states' jurisdictions, on the high seas around some highly productive regions adjacent to the EEZs. In particular, the continental shelf areas that extends beyond the 200-mile EEZ limits, as in the case of the 'Nose', the 'Tail', and the Flemish Cap off the eastern coast of Canada. Competition for fish in the absence of appropriate management practices in these high seas areas continues to increase and intensify resulting in the rapid depletion of the resources. This underscored the limitations of the EEZ regime. Not only did DWF fleets serve to undercut coastal state's attempts at stock conservation, they also siphoned off economic benefits that coastal states anticipated from their control of fisheries in the EEZ (Juda, 1997). Even with the establishment of international and regional cooperation among relevant states as envisaged by the 1982 UNCLOS, efforts for the conservation of these fish stocks beyond national jurisdictions proved inadequate and have not enjoyed universal success.

The major problem undermining the effectiveness of international cooperation and management of shared fisheries stocks on the high seas is the prevalence of illegal, unregulated and unreported (IUU) fishing. The Secretary-General on oceans and the law of the seas considered the IUU fishing on the high seas phenomenon to be the most severe problem currently affecting world fisheries (FAO, 1999). Studies also indicate that IUU fishing activities, in contravention of conservation and management measures adopted by regional and sub-regional fisheries organizations, is the main factor behind the depletion of global fish stocks (FAO, 2000).

4.2 IUU Fishing and the 1982 UNCLOS

Although the problem of fishing activity that is regarded as illegal is scarcely new, the terminology IUU itself is. Until 1997, illegal fishing was known as “unauthorised fishing in zones of national jurisdiction and on the high seas” (Corveler, 2002). It wasn’t until the recent codification of international law governing sovereign rights in respect of oceans and seas that the phrase “illegal, unreported and unregulated (IUU) fishing” is being widely understood and agreed as to its meaning (Upton and Vitalis, 2003).

The term IUU fishing first appeared at the Convention on the Conservation of Marine Living Resources (CCAMLR) meetings of 1997 where it was used to discuss illegal activities undertaken by Parties or non-Parties within the Convention area. Today, the term IUU fishing is widely employed internationally in meetings and reports of various fisheries organisations.

Illegal, unreported and unregulated fishing can be broadly defined as fishing operations conducted outside agreed conservation and management schemes. Upton and Vitalis, (2003) described the IUU fishing as “fishing that is conducted in breach of conditions governing waters under the exclusive control of sovereign states, or fishing conducted on the high seas that is in breach of measures agreed between sovereign states – either at the global level or at the regional level”. The FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO IPOA-IUU),

offers a compilation of activities, which, in material terms, comprise its field of application. These activities are as follows:

- Illegal fishing is conducted by vessels of countries that are parties to a regional fisheries management organization (RFMO) but operate in violation of its rules, or operate in a country's waters without permission.
- Unreported fishing is catch not reported or misreported to national relevant authorities or RFMO.
- Unregulated fishing is conducted by vessels without nationality or flying the flag of states not parties of relevant fisheries organizations and who therefore consider themselves not bound by the rules.

Illegal, Unreported and Unregulated fishing activities

Area	EEZs	High Seas			
		With RFMOs			Without RFMOs
Actors	Foreigners	Party	Cooperating States	Non-Party	Any
Illegal					
Unreported					
Unregulated					

Adapted from Carl-Christian Schmidt, 2004

IUU fishing occurs in almost every sea and ocean of the world, in both small-scale and industrial fisheries, in marine and inland fisheries, as well as in zones of national jurisdiction and on the high seas. While coastal states have the enforcement powers to regulate fishing and the fishing activities within their own EEZs, it is the destructive activities of IUU fishing vessels on the high seas that poses a crucial challenge to the

ability of concerned states to effectively conserve and manage the world's major fisheries (Komatsu, 2000).

Increasing IUU fishing activities worldwide have led to growing international concern and interest in tackling the problem. This is because IUU fishing activities on the high seas undermines the management efforts by national fishery authorities within the EEZs, and/or competent RFMOs in the region. Left unchecked, the system upon which fisheries management decisions are based becomes fundamentally flawed and will lead to non-achievement of management goals. In extreme cases, IUU fishing can lead to the collapse of a fishery or seriously affect efforts to rebuild stocks that have already been depleted (Doulman, 2000).

IUU fishing is often associated with the activities of the so-called "flag-of-convenience" (FOC) vessels from open registry states. Many of these states do not belong to, or cooperate with any regional fisheries management organization (RFMO) that has adopted international conservation and management measures. As such, they are not bound by the many international instruments that require the exercise of flag state control over fishing vessels, nor do they exercise flag state control on a voluntary basis. This makes it attractive for fishing vessel owners that would otherwise have to comply with such measures, to reflag their vessels to an open registry states that do not exercise effective flag state compliance responsibilities over fishing fleets. By reflagging, these vessels can escape internationally agreed conservation and management measures on the high seas, which their own flag states, would have otherwise enforced (Willman, 2001).

Unregulated and protected by the flags they fly, these IUU/FOC vessels roam and fish the high seas indiscriminately on the already fragile global fishery fully aware that no other forces can infringe on their operations.

International concerns about the impact of IUU fishing on high seas fisheries resources have preoccupied countries and regional fishery bodies for more than a decade. However, dealing with IUU fishing proved complicated. This is because the freedom of the high seas provisions as enshrined in the 1982 UNCLOS (Article 87) limits the authority of states, other than the flag state, to take “such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas” (UNCLOS, Article 117). Accordingly, only the flag states are duty bound to exercise control over vessels entitled to fly their flags and thus deter any IUU fishing. The coastal states do not have jurisdiction over vessels on the high seas when those vessels do not fly the coastal states’ flags, even though they might violate the coastal states’ interest by overfishing stocks on the high seas that also straddle the EEZs (UNCLOS, Article 92).

UNCLOS asserts the right of all states to flag ships (Art 90) and in doing so underwrites the primacy of flag states as the conduit through which the enforcement of shipping obligation must pass. With respect to high seas fishing flag states are obligated to ensure that those vessels they flagged comply with:

- treaty obligations of concerned states;

- certain rights and duties and interests of coastal states as provided for in the Convention;
- basic obligation to conserve fish stocks on the high seas; and
- a duty to take or to cooperate in taking measures to conserve fishing stocks (Article 116)

The Convention also compels the flag states to ensure that those fishing vessels live up to those responsibilities. The fact that the IUU fishing on the high seas continues to exist is a clear indication that certain flag states are not exercising appropriate control over their fishing fleets.

The 1982 Convention's heavy reliance on flag states for enforcement of international regulations has been its major weakness in combating IUU fishing on the high seas. There would not be a problem of IUU fishing if all states abide by their responsibilities – either by forcing their ships to comply or refusing to flag them. Evidently, many states cannot or will not take enforcement action against fishing vessels flying their flags, even when their activities are clearly damaging the marine environment. This is indicative of the Convention's shortcomings (Upton and Vitalis, 2003).

Ineffective flag state control of fishing vessels required under international law has led to a frenzy of international negotiating activity that seeks with far greater specificity to do what UNCLOS at the global, generic level fails to achieve.

4.3 1992 International Conference on Responsible Fishing

The grey areas of international fishing regulations have enabled certain destructive fishing activities, such as the IUU fishing, to proliferate and demands the increasing attention of the international community. To deal with this gap, the FAO convened the International Conference on Responsible Fishing at Cancun in May 1992. The primary aim of the Conference was to attain consensus on the need for an International Code on Responsible Fishing.

4.3.1 International Code of Conduct for Responsible Fisheries, 1995 (FAO Code of Conduct)

Essentially, the FAO Code of Conduct was the outcome of the 1992 International Conference on Responsible Fishing held at Cancun, Mexico. Adopted in 1995, the Code is a sweeping statement of principles and approaches recommended to promote the sustainable use of the world fisheries and address its technical, economic, ecological, legal, and management aspects (Juda, 2002). It establishes international principles and regulations for the implementation of responsible fishing practices in order to ensure the effective conservation, management, and sustainable development of fish stocks while respecting the ecosystem and marine biodiversity.

The Code covers a considerable number of controversial and problematic issues in contemporary fisheries conservation and management. However, the voluntary character

of the instrument, therefore, is not legally binding on states and all those involved in the fisheries (Yturriaga, 1997).

4.3.2 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 (FAO Compliance Agreement)

The Compliance Agreement was the first international legally-binding instrument to directly deal with reflagging and other FOC issues. Entered into force on 24 April 2003 the Agreement was intended to improve the regulation of fishing vessels on the high seas by strengthening 'flag-state responsibility'. If a lack of specificity in the 1982 UNCLOS Convention was the only reason flag state responsibilities were not being prosecuted for fisheries violations, then the 1993 Agreement should have fixed the problem. This treaty provides explicitly that flag states should do whatever it takes to ensure that fishing vessels flying their flags do not undermine international conventions (Juda, 2002).

The Compliance Agreement spells out the responsibilities of flag states with respect to high seas fishing by vessels flying their flags. It also requires the flag states not allowing any of their vessels to be used for high seas fishing unless the vessel has been duly authorised to do so by the flag states' authorities. Further, the Compliance Agreement prohibits flag states from allowing the use of their flags unless they are able to exercise effectively their responsibilities in respect of those fishing vessels. This latter requirement constitutes a response to the problems associated with the reflagging of fishing vessels under the flag of a state that is either unwilling or unable to enforce

fisheries regulations. It allowed enforcement measures to be taken against reflagged or stateless fishing vessels on the high seas (Yturriaga, 1997).

Although the 1993 FAO Compliance Agreement is a legally binding international treaty, it cannot bind non-signatories, and signatory states are bound to respect flag states rights under the 1982 UNCLOS Convention, no matter how disreputable their activities may be (Upton and Vangelis, 2003).

4.4 1995 UN Fish Stocks Agreement (UNFA) and the Role of Flag States

Adopted on the 4th August 1995, the UN Fish Stocks Agreement (UNFA) entered into force on 21st December 2001. Unlike its predecessors, the 1995 UNFA is a more limited agreement in that it is concerned only with straddling and highly migratory fish stocks.

The Agreement details how states should co-operate to conserve fish stocks in order to ensure they are exploited in a sustainable manner, both within EEZs and on the high seas. UNFA provides the framework for such co-operation by outlining minimum international standards for the conservation and management of straddling and highly migratory fish stocks. Further, UNFA strives to ensure that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in adjacent international seas are compatible.

The Agreement strengthens the obligations of states to cooperate through competent RFMOs (or other arrangements) in the management of the high seas fish stocks as

envisaged by the 1982 UNCLOS (UNFA, Article 8). Where a regional or subregional arrangement already exists, non-members are encouraged to become party to this arrangement. In cases where such organizations are not operative, states have the duty to establish competent RFMOs. Accordingly, only those states that “play by the rules” and are members of the organizations are to have access to the protected stocks on the high seas (Sydnes, 2002).

Under UNFA, fishing vessels flying the flags of signatory states are required to comply with all regional and sub-regional measures, whether or not the flag state in question is a party to the relevant RFMO. Vessels of signatory states may be subject to enforcement measures as well, through boarding and inspection, by authorized vessels of other states that belong to the fishery organization or are participants in a regional arrangement. UNFA also provides for enforcement measures, which may be taken by port states party to the Agreement whereby the port state authorities may inspect documents, gear, and catches on entering vessels. The port state may also adopt legislation forbidding landings or trans-shipment of illegal catches from its port. These UNFA provisions represent a departure from the traditional practice of exclusive flag state control over the activities of vessels on the high seas.

The 1995 UNFA is a step in the right direction. However, it suffers from the same weakness as the 1982 UNCLOS because the provisions of UNFA cannot bind non-signatory flag states. Thus, on the high seas it is still the flag states that exert jurisdiction

over vessels flying their flags, thereby leaving the door open for circumvention of effective implementation.

4.5 2001 FAO International Plan of Action on IUU Fishing (IPOA-IUU)

The IPOA-IUU was adopted by the FAO Committee on Fisheries (COFI) on 2 March 2001 and endorsed by the FAO Council on 23 June 2001. The purpose of the IPOA-IUU is to prevent, deter and eliminate IUU fishing and addresses the problem of FOCs by providing countries with a set of comprehensive, effective and transparent measures on the basis of which they may act either directly or through relevant RFMOs. The IPOA-IUU seeks to address IUU fishing in a holistic manner and provides states with a comprehensive ‘toolbox’ as a checklist for dealing with IUU fishing for a range of situations (Swan, 2002).

The IPOA-IUU is particularly detailed in its injunctions to flag states, spelling out detailed provisions in respect of such avoidance devices as chartering and flag hopping, the registration of vessels, and the imposition of formal authorizations to fish, which contain a large range of requirements relating to things like catch reporting systems and mechanisms to monitor compliance (Upton and Vitalis, 2003).

Albeit a voluntary instrument, the IPOA prescribes detailed regulatory blueprints that states are encouraged to adopt. Under the Plan, there are provisions for the port states to collect specified information on fishing activities and possibly to deny landings or

transshipment of catch to IUU fishing vessels. States can also impose trade-related measures such as import bans, as well as adopt legislation making it an offence to trade fish caught by IUU vessels. The IPOA also urges states to adopt multilateral catch documentation and certification requirements as a means of eliminating trade in fish derived from IUU fishing (Schmidt, 2004).

The implementation of the IPOA-IUU focuses on the elaboration of national plans of action on several types of measures such as coastal state measures, port state measures, and market related measures. Given that IUU fishing is only worthwhile if there is a potential net economic benefit; IPOA encourages states to adopt strategies to combat IUU fishing to include measures that reduce the relative benefits and raise the costs of IUU fishing. IPOA measures seek to compensate for poor flag state control and that should enable national and regional fisheries to be conserved and managed in a more effective manner (Doulman, 1999).

4.6 Combating IUU Fishing and Errant Flag States at the Regional Level

International instruments that were developed during the 1990s, like the FAO Code of Conduct, the Compliance Agreement and the UN Fish Stocks Agreement are all dealing with port state control of fishing vessels (Lobach, 2000). Under the Port State regime, when fishing vessels enter the port of the coastal states, international law recognizes the authority of enforcement officers to board and inspect the vessels' documents.

Port state enforcement is generally tied to internationally agreed rules and standards and in the case of fisheries, those that are set by regional fisheries management organizations. Some states, however, have established measures reaching further than those set by the RFMOs to which those states are parties. States like Canada, Iceland, Norway and United States are refusing access to port services for vessels undermining conservation and management measures on the high seas.

Other schemes adopted by coastal states to combat IUU fishing at the regional level include the use of trade-related measures to regulate, restrict or prohibit trade. Examples include landing actions, certification, labelling, or size requirements, among others (Chaves, 2000).

Table 2: Status of UNFA and the FAO Compliance Agreement

State or Entity	UNFA	Compliance Agreement	State or Entity	UNFA	Compliance Agreement
Argentina		x	Malta	x	
Australia	x	x	Marshall Islands	x	
Austria	x		Mauritius	x	x
Bahamas	x		Mexico		x
Barbados	x	x	Micronesia (FSM)	x	
Belgium	x		Monaco	x	
Benin		x	Morocco		x
Brazil	x		Myanmar		x
Canada	x	x	Namibia	x	x
Chile		x	Nauru	x	
Cook Islands	x		Netherlands	x	
Costa Rica	x		New Zealand	x	
Cyprus	x	x	Norway	x	x
Denmark	x		Papua New Guinea	x	
Egypt		x	Peru		x
EC	x	x	Portugal	x	
Fiji	x		Russian Federation	x	
Finland	x		Saint Kitts & Nevis		x
France	x		Saint Lucia	x	x
Georgia		x	Samoa	x	
Germany	x		Senegal	x	
Ghana		x	Seychelles	x	x
Greece	x		Solomon Islands	x	
Iceland	x		South Africa	x	
India	x		Spain	x	
Iran	x		Sri Lanka	x	
Ireland	x		Sweden	x	x
Italy	x		Syria		x
Japan		x	Tanzania		x
Korea		x	Tonga	x	
Kenya	x		Ukraine	x	
Luxembourg	x		United Kingdom	x	
Madagascar		x	USA	x	x
Maldives	x		Uruguay	x	x

Adapted from Meltzer, E (2005)

5.0 CANADA'S EXPERIENCE WITH NAFO – A CASE STUDY

Prior to the extension of coastal states' jurisdiction to 200 nautical miles in 1976, the fisheries in the NW Atlantic were managed pursuant to the International Convention for the Northwest Atlantic Fisheries (ICNAF). The end came for ICNAF when the United States withdrew from the organisation in 1977-78 when they implemented a system based on the Magnuson Fisheries Management Act (MFCMA).

Following the establishment of the 200 nautical miles zone in 1977, Canada took the lead in establishing the Northwest Atlantic Fisheries Organisations (NAFO) as a successor to ICNAF. Canada had the potential for significant gain as a result of the extended fisheries jurisdiction as provided for under UNCLOS (Parsons, 1993). This extension, however, also had profound implications for Canadian fisheries management. With the extension, Canada ended up with major groundfish resources on the Grand Banks straddling an artificial 200 miles line.

For Canada, a successor organisation would be required for two reasons. Firstly, a surplus in stocks existed within the Canadian zone, and secondly, stocks ranged within and beyond 200 nautical miles in which Canadian fishers had vital interests (OIC, 1990). A multilateral arrangement would be needed to provide protection for stocks occurring beyond the 200 miles. Consequently, Canada joined with other states in establishing NAFO by agreement in 1978 (Parsons, 1993).

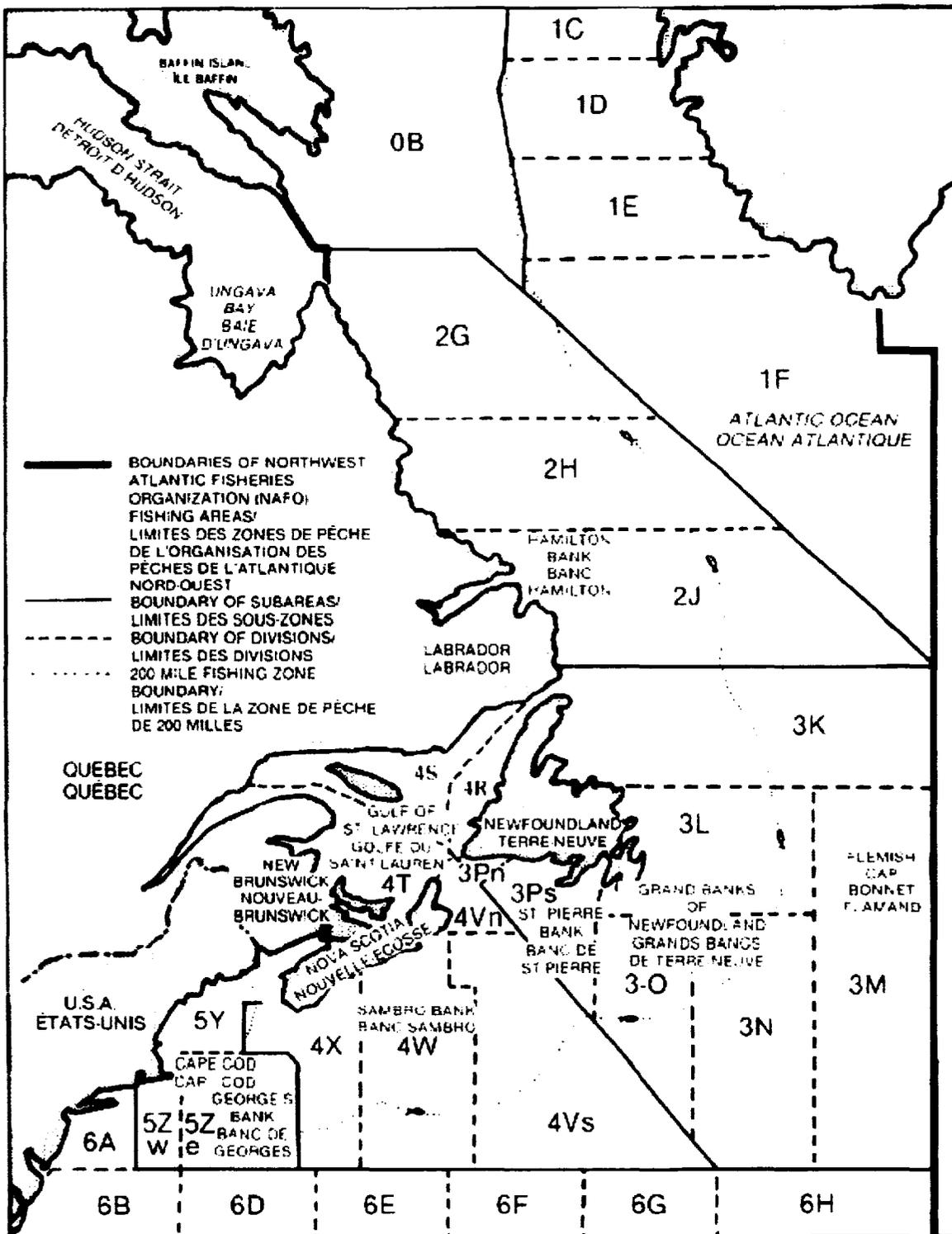


Figure 4: NAFO Convention Area:
<http://www.ns.ca/nsaf/marine/map/pmap2.htm> 15 Oct 2005

At the beginning of NAFO's existence, the arrangement worked reasonably well. NAFO carried forward the management regime established under ICNAF, including the system of TAC and national quotas, suitably modified to reflect Canadian jurisdiction over most of the Grand Banks. All contracting parties agreed to allocation of TACs and national quotas by NAFO. NAFO's decisions were adhered to and significant rebuilding of straddling stocks occurred. Essentially, NAFO was formed as a regional fisheries organisation to manage harvesting by distant water fleets in international waters outside Canada's 200 nautical miles (Applebaum, 1993).

With the accession of Spain and Portugal to the European Community in 1986, the EC's policy towards NAFO shifted dramatically from cooperation to conflict based on demands for vastly increased allocations of straddling stocks (Sullivan, 1989). While TACs and national quotas are set by majority vote in the NAFO Fisheries Commission, each contracting party can use the opting-out procedure and not be bound by any such decision. In Canada's view, however, the across-the-board use of the objection procedure is inconsistent with the purposes of NAFO convention and the obligations undertaken pursuant to that convention by contracting parties. Nonetheless, the EC continued making wholesale use of the objection procedure and established its own unilateral quotas, which are many times higher than those set by NAFO Fisheries Commission (DFO, Atlantic Fisheries) (Parsons, 1993). Compounding the problem was the failure of the EC to control its fleets, leaving the door open to massive overfishing (OIC, 1990).

Canada responded to the EC's policy by denying the EC: (a) the surplus allocations in the Canadian zone, (b) access to the Canadian zone to harvest NAFO quotas, (c) access to over-the-side sales, and (d) access for EC fishing vessels to the Canadian ports (except in emergencies). The belief was that these measures would make it commercially unattractive for EC vessels to continue fishing outside Canada's 200 miles limit (OIC, 1990).

While Canada and the EC were engaging in the war of attrition, the fish stocks continued to decline. The unregulated fishing by non-NAFO members in the Convention Area outside the 200 miles was on the rise. Canada had few alternatives. Under customary law there can be no enforcement beyond 200 miles without agreement by the flag states. To further complicate the issue, Canadian surveillance has shown that EC vessels have operated with flags of convenience in order to take advantage of the unregulated fishing (Bailey, 1998).

Irresponsible fishing by EC members, the continued deterioration of stocks and the collapse of the Canadian Atlantic fishing industry have created extreme tension within NAFO. Questions were raised among Canadian fishing community as to the value of continued Canadian participation in NAFO and to consider alternative means of protecting the fisheries of the Northwest Atlantic beyond 200 miles (IOC, 1990). The fact that NAFO has no specific power to enforce the conservation measures over transboundary stocks leaves Canada with a difficult and precarious environmental problem.

Canada has, over the years, expended considerable diplomatic effort to negotiate in good faith with the EC and persuade the Community to exert management responsibility not only over their vessels but also over those EC vessels reflagged and fishing without quota. With no resolution in sight, Canada warned the EC that it is prepared to take unilateral action to end foreign overfishing if an international solution cannot be found (Chronicle Herald, 11 Feb 1994).

Mr. Brian Tobin, the then Federal Fisheries Minister, told the EC that Canada is prepared to intercept foreign fishing vessels on the high seas to protect the dwindling stocks on the Grand Banks off Newfoundland. True to his words, in 1995 Mr. Tobin ordered the arrest of the Spanish vessel 'Estai' for fishing on the Grand Banks outside the 200 miles limit. The incident, which is known as the 'Turbot War' finally, brought an end to the overfishing dispute with the EC.

The resulting situation has cast doubt on the future viability of NAFO to provide for conservation in the area that is supposed to be under its control. According to Sullivan (1989), the main weakness of NAFO is the objection procedure, which serves to legitimise overfishing of the established TACs. If a contracting party objects to a proposal within a certain period of time it is not bound by the proposal. The abuse of this objection procedure, particularly by the EC, has been largely responsible for the inability of the organisation to fulfil its objectives of conserving the fisheries stocks of the Northwest Atlantic.

NAFO also lacks an effective scheme to enforce conservation measures adopted by contracting members. NAFO Convention provides only for reciprocal inspections by NAFO members of each other's vessels but does not alter the basic rule of the high seas that enforcement depends on flag states jurisdiction. The lack of any reciprocal enforcement mechanisms reduces the effectiveness of the Organisation. There is also no third party enforcement to ensure conformance of conservation measures. Compliance is voluntary and infractions are dealt with only by flag states. There is no unanimity by member states to conserve the resource (Sullivan, 1989). While NAFO members were squabbling with each other, non-NAFO members were increasingly fishing within the Regulatory Area.

The upward and unrestricted trend in overfishing in NAFO regulatory areas demonstrates that NAFO does not provide effective management of fisheries. It is clear that NAFO Convention will require substantial revision if NAFO is to achieve its primary objective of resource conservation.

6.0 SUMMARIES AND CONCLUSION

Man's exploitation of the sea and its resources has a long history of international conflict, as well as an equally long history of international co-operation. Scientific progress and technological advances allow mankind to harvest marine fisheries resources more efficiently and this; will undoubtedly intensify the confrontation among nations of the world over the exploitation of these resources. The rapid expansion in fishing technology had some stocks, which were once considered inexhaustible become depleted or almost extinct due to overfishing. Concerned over the economic impact of diminishing fisheries resources off their coasts, many coastal states unilaterally claimed jurisdiction over a vast expanse of water, which was traditionally a part of the high seas.

The adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was heralded as the beginning of a new era of fisheries conservation and management. With the universal acceptance and implementation of the 200-mile exclusive economic zone (EEZ) many commercially viable fish stocks located within the 200 miles from the coastal baselines are now under the jurisdiction of coastal States. Coastal states have the management responsibility and the enforcement rights to protect the living resources within their EEZ. They have the jurisdiction to deal with national and non-national fishing vessels operating in their offshore regions. With only 10% of the world's fishable capture fisheries outside national jurisdictions, UNCLOS would effectively put an end to the overexploitation of marine fishery resources.

While the Convention apparently resolved the potentially conflicting interests of coastal states seeking control over the exploitation of living resources in adjacent waters and maritime nations seeking to preserve traditional rights of navigation and transit, it does not, however, adequately protect the living resources on the high seas. Here fishing is in principle open to all states, apart from the restrictions arising out of the rules relating to particular species. Nevertheless, provisions of UNCLOS lay down a duty on interested states to co-operate in the management and conservation of high seas fishery resources, making use, where appropriate, of international fishery organizations.

The problem facing fisheries organizations in implementing or enforcing management measures can be traced back to UNCLOS. The Convention focuses its fisheries management strategy based on the arbitrary 200-mile boundary and ignores the notion of biological unity. Fish are no respecters of man-made boundaries and will move and migrate beyond national jurisdiction during their life cycle or seasonal patterns.

Unfortunately, beyond the EEZ, coastal states have been, as a matter of international law, virtually powerless to unilaterally deal with non-national fishing activity. Compounding to the problem is the Convention's heavy reliance on flag states for enforcement of fisheries management measures on their vessels. Even when it has become evident that some flag states have neither the capacity nor the intention of exercising that control. The exclusivity of flag state jurisdiction on the high seas remained intact.

Lack of flag state control over vessels flying their flags has been responsible for the prevalence of illegal, unregulated and unreported (IUU) fishing activities on the high

seas. Protected by the flags they fly and the principle of freedom of the high seas under international law, these IUU fishing vessels roam and fish indiscriminately around the world knowing fully that no other forces can take any action on their operations. Their destructive fishing practices have shown to adversely affect fish stocks both on the high seas and within coastal states' EEZs.

A weakness in combating IUU fishing is that there is no single legal instrument governing all fisheries that have been agreed upon internationally. There are of course many legal instruments relating to specific species or regions or combination of both that are in force, but that appears to be not enough. In addition to UNCLOS, current international instruments to curb IUU fishing on the high seas are:

- 1993 FAO Compliance Agreement
- 1995 UN Fish Stocks Agreement
- 1995 FAO Code of Conduct for Responsible Fisheries
- 2001 FAO International Plan of Action on IUU Fishing (IPOA-IUU)

Among existing instruments, the Compliance Agreement and the UN Fish Stock Agreement are legally binding international instruments and contain a range of requirements relating to flag state responsibilities, compliance and enforcement. The Code of Conduct and the IPOA-IUU are voluntary and management oriented instruments. Unfortunately, these instruments are not binding on non-Party states.

In International Law, much depends on the 'goodwill' of states in applying conservation regimes as the guiding principles remains to be the freedom of the high seas. There is no enforcement agency that will police the activities, and in the case of UNCLOS, the Convention relegated the duties to applying conservation measures to international fisheries organizations to which relevant states belong.

International marine fisheries organisations have been productive venues for scientific and technical experts to meet and to initiate consensus on appropriate management principles. Apart from this function, however, RFMOs have generally been ineffective as management bodies. They have been unable to acquire the authority and/or the means to enforce management regulations and they have been stymied by inconsistencies with national positions. While RFMOs have provided a means of exchanging information and developing management strategies, they have had difficulty implementing or enforcing recommended management principles since the adoption of the 200 miles EEZ. According to Hinds (1982), the RFMOs have had little authority, enforcement capability and carry little weight in national political arenas

Most of the evidence on international fisheries organisations suggests that their performance has not effectively conserved and managed the resource stock due to their failure to control fishing effort. This is true for both transboundary and straddling and highly migratory fish stocks. In the case of straddling and highly migratory fish stocks, the failure to control effort has been exacerbated by the presence of new entrants and non-parties to the agreements.

The failure of some fisheries organizations to effectively conserve and manage fisheries resources has forced many coastal states to enact their own laws and regulations governing their management. These include unilateral actions, such as extension of zones, seizure of vessels and port closure.

From Canada's standpoint, the current legal regime had not been very effective in her effort in stopping the continuing problem of overfishing, illegal fishing and misreporting of the straddling stocks adjacent to the EEZs. Canada had tried diplomacy, took bold action to strengthen its enforcement jurisdiction in support of conservation of high seas through the amendments to the *Coastal Fisheries Protection Act*, and finally had to resort to the apprehension of the "Estai" on the high seas. All these in an effort to give notice to NAFO members that the stocks levels were for most part at a dangerously low level and that the status quo is not acceptable if stocks are to be allowed to recover.

The problems facing Canada in dealing with NAFO members, lies in the NAFO Objection and Dispute Settlement Procedures. By using the Objections Procedure, member states could seemingly remain members of NAFO in good standing; while at the same time completely ignoring any attempts at catch limitation and conservation. The major difficulty in the use of Objection Procedure is the lack of an agreed follow-up procedure and a linkage or trigger mechanism for dispute settlement. Without formally agreed procedures it is difficult to determine at what point in the process a dispute can be said to exist. A compulsory binding dispute settlement procedure would, if linked to the Objection Procedure, provide a stronger remedy for its perceived misuse.

Consequently, Canada's experience with international legal regime, albeit with NAFO has been confrontational. NAFO has disappointed Canada's expectations as a forum for genuine cooperation in the management and conservation of the shared stocks of the Northwest Atlantic.

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APPENDICES

- Appendix 1: Text of selected articles of the 1982 United Nations Convention on the Law of the Sea
- Appendix 2: Regional Fisheries Bodies
- Appendix 3: Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
- Appendix 4: 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

APPENDIX 1

Text of selected articles of the 1982 United Nations Convention on the Law of the Sea

Article 61 - Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62-Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61 .
2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.
3. In giving access to other States to its exclusive economic zone under this article the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.
4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State.

These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:

- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught;
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

- (g) the placing of observers or trainees on board such vessels by the coastal State;
 - (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
 - (i) terms and conditions relating to joint ventures or other co-operative arrangements;
 - (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
 - (k) enforcement procedures.
5. Coastal States shall give due notice of conservation and management laws and regulations.

Article 63 -Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.
2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

Article 64 - Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.
2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

Article 73- Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed

Article 87 -Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked.

Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;

- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 94- Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size;

and (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

- (a) the construction, equipment and seaworthiness of ships;
- (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
- (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article 116 -Right to fish on the high seas

All States have the right for their nationals to engage in fishing on the high seas subject to:

- (a) their treaty obligations;

(b) the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and (c) the provisions of this section.

Article 117 -Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas

All States have the duty to take, or to co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118 - Co-operation of States in the conservation and management of living resources

States shall co-operate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 119 - Conservation of the living resources of the high seas

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:

(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

APPENDIX 2

Regional Fishery Bodies

FAO RFBs	
APFIC	Asia-Pacific Fishery Commission
CECAF	Fishery Committee For The Eastern Central Atlantic
CIFA	Committee For Inland Fisheries Of Africa
COPESCAL	Comision De Pesca Continental Para America Latina
CWP	Coordinating Working Party On Fisheries Statistics
EIFAC	European Inland Fisheries Advisory Commission
GFCM	General Fisheries Commission For The Mediterranean
IOTC	Indian Ocean Tuna Commission
RECOFI	Regional Commission For Fisheries
SWIOFC	Southwest Indian Ocean Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
GLOBAL AND TRANS-OCEAN	
ACFR	Advisory Committee On Fishery Research
CCAMLR	Convention On The Conservation Of Antarctic Marine Living Resources
CCSBT	Commission For The Conservation Of Southern Bluefin Tuna
CWP	Coordinating Working Party On Fisheries Statistics
IWP	The International Whaling Commission
OLDEPESCA	Organizacion Latinoamericana De Desarrollo Pesquero
ATLANTIC OCEAN REGION	
AAFC	Atlantic Africa Fisheries Conference
CARPAS	Regional Fisheries Advisory Committee For The Southwest Atlantic
COREP	Regional Fisheries Committee For The Gulf Of Guinea
CECAF	Fishery Committee For The Eastern Central Atlantic
IBSFC	International Baltic Sea Fishery Commission
ICCAT	The International Commission For The Conservation Of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
NAFO	Northwest Atlantic Fisheries Organizations
NAMMCO	The North Atlantic Marine Mammal Commission
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	The North East Atlantic Fisheries Commission
SEAFO	South Atlantic Fisheries Organization
SRCF	Sub-regional Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
MEDITERRANEAN, BLACK SEA AND CONNECTING WATERS.	
GFCM	General Fisheries Commission For The Mediterranean

PACIFIC OCEAN REGION	
APFIC	Asia-Pacific Fishery Commission
CPPS	Permanent Commission for the South Pacific
FFA	Pacific Islands Forum Fisheries Agency
IATTC	Inter-American Tropical Tuna Commission
IPHC	International Pacific Halibut Commission
WCPFC	Western and Central Pacific Fisheries Commission
NPAFC	North Pacific Anadromous Fish Commission
NACA	Network of the Aquaculture Centres in Asia-Pacific
PICES	North Pacific Marine Science Organization
PSC	Pacific Salmon Commission
SPC	Secretariat of the South Pacific Community
SEAFDEC	Southeast Asian Fisheries Development Center
CEPTFA	Council of the Eastern Pacific Tuna Fishing Agreement
INDIAN OCEAN REGION	
BOBP-IGO	Bay of Bengal Programme – Intergovernmental Organization
IOTC	Indian Ocean Tuna Commission
RECOFI	Regional Commission For Fisheries
SWIOFC	Southwest Indian Ocean Fisheries Commission
WIOTO	Western Indian Ocean Tuna Organization
INLAND REGIONS	
APFIC	Asia-Pacific Fishery Commission
CIFA	Committee For Inland Fisheries Of Africa
COPESCAL	Comision De Pesca Continental Para America Latina
EIFAC	European Inland Fisheries Advisory Commission
MRC	Mekong River Commission
LVFO	Lake Victoria Fisheries Organization
NACA	Network of the Aquaculture Centres in Asia-Pacific

APPENDIX 3

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

PREAMBLE

The Parties to this Agreement.

Recognizing that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,

Further recognizing that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,

Acknowledging the right and interest of all States to develop their fishing sectors in accordance with their national policies, and the need to promote cooperation with developing countries to enhance their capabilities to fulfil their obligations under this Agreement,

Recalling that Agenda 21, adopted by the United Nations Conference on Environment and Development, calls upon States to take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas,

Further recalling that the Declaration of Cancun, adopted by the International Conference on Responsible Fishing, also calls on States to take action in this respect,

Bearing in mind that under Agenda 21, States commit themselves to the conservation and sustainable use of marine living resources on the high seas,

Calling upon States which do not participate in global, regional or subregional fisheries organizations or arrangements to join or, as appropriate, to enter into understandings with such organizations or with parties to such organizations or arrangements with a view to achieving compliance with international conservation and management measures,

Conscious of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish,

Mindful that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Realizing that the objective of this Agreement can be achieved through specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing,

Noting that this Agreement will form an integral part of the International Code of Conduct for Responsible Fishing called for in the Declaration of Cancun,

Desiring to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement:

- (a) "fishing vessel" means any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in such fishing operations;
- (b) "international conservation and management measures" means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea. Such measures may be adopted either by global, regional or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements;
- (c) "length" means
 - (i) for any fishing vessel built after 18 July 1982, 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with

a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;

(ii) for any fishing vessel built before 18 July 1982, registered length as entered on the national register or other record of vessels;

(d) "record of fishing vessels" means a record of fishing vessels in which are recorded pertinent details of the fishing vessel. It may constitute a separate record for fishing vessels or form part of a general record of vessels;

(e) "regional economic integration organization" means a regional economic integration organization 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;

(f) "vessels entitled to fly its flag" and "vessels entitled to fly the flag of a State", includes vessels entitled to fly the flag of a Member State of a regional economic integration organization.

Article II

APPLICATION

1. Subject to the following paragraphs of this Article, this Agreement shall apply to all fishing vessels that are used or intended for fishing on the high seas.

2. A Party may exempt fishing vessels of less than 24 metres in length entitled to fly its flag from the application of this Agreement unless the Party determines that such an exemption would undermine the object and purpose of this Agreement, provided that such exemptions:

(a) shall not be granted in respect of fishing vessels operating in fishing regions referred to in paragraph 3 below, other than fishing vessels that are entitled to fly the flag of a coastal State of that fishing region; and

(b) shall not apply to the obligations undertaken by a Party under paragraph 1 of Article III, or paragraph 7 of Article VI of this Agreement.

3. Without prejudice to the provisions of paragraph 2 above, in any fishing region where bordering coastal States have not yet declared exclusive economic zones, or equivalent zones of national jurisdiction over fisheries, such coastal States as are Parties to this Agreement may agree, either directly or through appropriate regional fisheries organizations, to establish a minimum length of fishing vessels below which this Agreement shall not apply in respect of fishing vessels flying the flag of any such coastal State and operating exclusively in such fishing region.

Article III

FLAG STATE RESPONSIBILITY

1.

(a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.

(b) In the event that a Party has, pursuant to paragraph 2 of Article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.

2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.

3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.

4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.

5.

(a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that

(i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and

(ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.

(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.

(c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.

(d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.

6. Each Party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.

8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

Article IV

RECORDS OF FISHING VESSELS

Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

Article V

INTERNATIONAL COOPERATION

1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement.

Article VI

EXCHANGE OF INFORMATION

1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

- (a) name of fishing vessel, registration number, previous names (if known), and port of registry;
- (b) previous flag (if any);
- (c) International Radio Call Sign (if any);
- (d) name and address of owner or owners;
- (e) where and when built;

- (f) type of vessel;
 - (g) length.
2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under Article IV:
- (a) name and address of operator (manager) or operators (managers) (if any);
 - (b) type of fishing method or methods;
 - (c) moulded depth;
 - (d) beam;
 - (e) gross register tonnage;
 - (f) power of main engine or engines.
3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this Article.
4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or subregional fisheries organization.
5. Each Party shall also promptly inform FAO of -
- (a) any additions to the record;
 - (b) any deletions from the record by reason of -
 - (i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;
 - (ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of Article III;
 - (iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;
 - (iv) the scrapping, decommissioning or loss of the fishing vessel concerned; or
 - (v) any other reason.
6. Where information is given to FAO under paragraph 5(b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.
7. Each Party shall inform FAO of
- (a) any exemption it has granted under paragraph 2 of Article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and
 - (b) any agreement reached under paragraph 3 of Article II.
- 8.
- (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.
 - (b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.
9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5(d) of Article III, has granted an authorization notwithstanding the provisions of paragraph 5(a) or 5(b) of Article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the Party's decision.
10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.
11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.

Article VII

COOPERATION WITH DEVELOPING COUNTRIES

The Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under this Agreement.

Article VIII

NON-PARTIES

1. The Parties shall encourage any State not party to this Agreement to accept this Agreement and shall encourage any non-Party to adopt laws and regulations consistent with the provisions of this Agreement.
2. The Parties shall cooperate in a manner consistent with this Agreement and with international law to the end that fishing vessels entitled to fly the flags of non-Parties do not engage in activities that undermine the effectiveness of international conservation and management measures.
3. The Parties shall exchange information amongst themselves, either directly or through FAO, with respect to activities of fishing vessels flying the flags of non-Parties that undermine the effectiveness of international conservation and management measures.

Article IX

SETTLEMENT OF DISPUTES

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.
2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.
3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea upon entry into force of the 1982 United Nations Convention on the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

Article X

ACCEPTANCE

1. This Agreement shall be open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a Member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency.
2. Acceptance of this Agreement shall be effected by the deposit of an instrument of acceptance with the Director-General of FAO, hereinafter referred to as the Director-General.
3. The Director-General shall inform all Parties, all Members and Associate Members of FAO and the Secretary-General of the United Nations of all instruments of acceptance received.
4. When a regional economic integration organization becomes a Party to this Agreement, such regional economic integration organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Agreement. Any Party to this Agreement may, at any time, request a regional economic integration organization that is a Party to this Agreement to provide information as to which, as between the regional economic integration organization and its Member States, is responsible for the implementation of any particular matter covered by this Agreement. The regional economic integration organization shall provide this information within a reasonable time.

Article XI

ENTRY INTO FORCE

1. This Agreement shall enter into force as from the date of receipt by the Director-General of the twenty-fifth instrument of acceptance.
2. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of such an organization.

Article XII

RESERVATIONS

Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Parties to this Agreement. The Director-General shall notify forthwith all Parties of any reservation. Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such acceptance, the State or regional economic integration organization making the reservation shall not become a Party to this Agreement.

Article XIII

AMENDMENTS

1. Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director-General.
2. Any proposed amendment of this Agreement received by the Director-General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.
3. Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director-General not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.
4. Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two-thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.
6. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of such an organization.

Article XIV

WITHDRAWAL

Any Party may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Parties and the Members and Associate Members of FAO of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

Article XV

DUTIES OF THE DEPOSITARY

The Director-General shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-member States as may become Party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO and any non-member States as may become Party to this Agreement of:
 - (i) instruments of acceptance deposited in accordance with Article X;
 - (ii) the date of entry into force of this Agreement in accordance with Article XI;
 - (iii) proposals for and the entry into force of amendments to this Agreement in accordance with Article XIII;
 - (iv) withdrawals from this Agreement pursuant to Article XIV.

Article XVI

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, and Spanish texts of this Agreement are equally authentic.

APPENDIX 4

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

The States Parties to this Agreement,

RECALLING the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

DETERMINED to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

RESOLVED to improve cooperation between States to that end,

CALLING for more effective enforcement by flag States, port States and coastal States of conservation and management measures adopted for such stocks,

SEEKING to address in particular the problems identified in Agenda 21, Chapter 17, Programme Area C, adopted by the United Nations Conference on Environment and Development namely that the management of high seas fisheries is inadequate in many areas and that some resources are over-utilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

COMMITTING themselves to responsible fisheries,

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 operations,

RECOGNIZING the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

CONVINCED that an agreement relating to the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

AFFIRMING that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

HAVE AGREED AS FOLLOWS:

PART I GENERAL PROVISIONS

Article 1 Use of Terms and Scope

For the purposes of this Agreement:

- (a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
 - (b) "conservation and management measures" means measures to conserve or manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;
 - (c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and
 - (d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.
2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.
 - (b) This Agreement applies *mutatis mutandis*:
 - (i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and

(ii) subject to article 47, to any entity referred to as an "international organization" in article 1 of Annex IX to the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.

Article 2 Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3 Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purposes of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis in respect of areas under national jurisdiction.

Article 4 Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5 General Principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or dependent upon or associated with the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or dependent on or associated with the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6 Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distributions of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socioeconomic conditions; and

(d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7 Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States 'or the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas areas;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

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 the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

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

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

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

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

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may submit the dispute, for the purpose of obtaining provisional measures, in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8 Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested state with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming a member of such organization or a participant in such arrangement, or by agreeing to apply the conservation and management measures established by such an organization or arrangement. States having a real interest in the fisheries concerned may become members of such organizations or participants in such arrangements. The terms of participation of such organizations or arrangements shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stocks in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stocks and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its member States or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9 Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10 Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;

- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of, or participants in, the organization or arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the subregional or regional fisheries management organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11 New members or Participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

- (a) the state of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12 Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13 Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14 Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to:

(a) agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15 Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16 Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and that State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1 of this article, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV NON-MEMBERS AND NON-PARTICIPANTS

Article 17 Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of subregional or regional fisheries management organizations or participants in subregional or regional fisheries management arrangements shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organizations or participants in such arrangements shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V DUTIES OF THE FLAG STATE

Article 18 Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations to:

(i) apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

(iii) require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding release of such information;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities, by, inter alia:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programme; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI COMPLIANCE AND ENFORCEMENT

Article 19 Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, that a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20 International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article III of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the

effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Article 21 Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of, or a participant in, such organization or arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of, or a participant in, the organization or arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States, through subregional or regional fisheries management organizations or arrangements, shall establish procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement actions, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, States shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to under paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting state of the results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe international rules and generally accepted practices and procedures relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. Inspecting States shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3(a);

- (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;
- (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;
- (d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies mutatis mutandis to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of the members of such organization or the participants in such an arrangement to ensure compliance with the conservation and management measures established by the organization or arrangement, members of, or participants in, such organization or arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportional to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

Article 22 Basic procedures for boarding and inspection pursuant to article 21

The inspecting State shall ensure that its duly authorized inspectors:

- (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
- (b) initiate notice to the flag State at the time of the boarding and inspection;
- (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
- (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting thereon any objection or statement which the master wishes to have included in the report;
- (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and

(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

- (a) accept and facilitate prompt and safe boarding by the inspectors;
- (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
- (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
- (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
- (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
- (f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessels authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23 Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, 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.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

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

PART VII REQUIREMENTS OF DEVELOPING STATES

Article 24 Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

- (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(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.

Article 25 Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations, to:

(a) enhance the ability of developing States, in particular the least developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall 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.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks 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 26 Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII PEACEFUL SETTLEMENT OF DISPUTES

Article 27 Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28 Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29 Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30 Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

8. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in article 2 of Annex V, article 2 of Annex VII and article 2 of Annex VIII for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stock concerned.

Article 31 Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32 Limitations on applicability of Procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX NON-PARTIES TO THIS AGREEMENT

Article 33 Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X GOOD FAITH AND ABUSE OF RIGHTS

Article 34 Good faith and abuse of rights

States Parties 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.

PART XI RESPONSIBILITY AND LIABILITY

Article 35 Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII REVIEW CONFERENCE

Article 36 Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.
2. The conference shall review and assess the adequacy of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII FINAL PROVISIONS

Article 37 Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for 12 months from the 1995 .

Article 38 Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39 Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40 Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41 Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42 Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43 Declarations and statements

Article 42 does not preclude a State or an entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44 Relation to other agreements

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

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45 Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Agreement and request the convening of a conference to consider such proposed amendment. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature by States Parties for 12 months from the date of adoption, at United Nations Headquarters, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 4, and 50 apply to all amendments to this Agreement.

5. An amendment to this Agreement shall enter into force for the States Parties which establish their consent to be bound by it on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 46 Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47 Participation by international organizations

1. In cases where an international organization referred to in article 1 of Annex IX to the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and

(b) article 3, paragraph 1.

2. In cases where an international organization referred to in article 1 of Annex IX to the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g. each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyze the data separately or jointly, as appropriate.

Article 3 Basic Fishery Data

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

(a) time series of catch and effort statistics by fisheries and fleet;

(b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];

(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to Support stock assessment, including:

(a) composition of the catch according to length, weight and sex;

(b) other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4 Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) vessel identification, flag and port of registry;

(b) vessel type;

(c) vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and

(d) fishing gear description (e.g. types, gear specifications and quantity).

The flag State will collect the following information:

- (a) navigation and position fixing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

Article 5 Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, log book data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

Article 6 Data Verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling.

Article 7 Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that Organization may also do the same at the subregional or regional level by arrangement with the States concerned.

Annex II

GUIDELINES FOR APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS.

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management
2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.
3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.
4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.
5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not over-fished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a pre-defined threshold. For over-fished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

