

**ANNEX 47**

United Kingdom letter to United Nations, 17 November 1983

UNITED NATIONS



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 Mr. W. S. Smith  
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Copies for the Hon. Secy.  
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 GENERAL  
 A/38/59B  
 22 November 1983  
 ORIGINAL: ENGLISH

Thirty-eighth session  
 Agenda item 9

GENERAL DEBATE

Letter dated 17 November 1983 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly

I have the honour to refer to the address made to the General Assembly on 27 September 1983 (A/38/PV.8, p. 71) by His Excellency the Prime Minister of Mauritius in which he referred to his country's "just and legitimate claim over the Chagos Archipelago".

I have been instructed to draw to Your Excellency's attention the fact that sovereignty over the Chagos Archipelago is vested in the United Kingdom of Great Britain and Northern Ireland. At no time has Mauritius had sovereignty over the Chagos Islands. In 1968, when Mauritius became an independent sovereign State, the Islands did not form part of the colony which then gained independence. Prior to 1968 the Chagos Islands were legally distinct from Mauritius, although they were for convenience administered by the (British Colonial) Government of Mauritius until they were incorporated in the British Indian Ocean Territory in 1965. Notwithstanding the above, the British Government has undertaken to cede the Islands of the Chagos Archipelago to Mauritius when they are no longer required for defence purposes.

I should be grateful if you would circulate this letter as a document of the General Assembly under agenda item 9.

(Signed) J. A. THOMSON

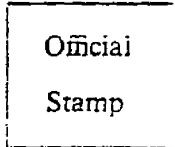
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**ANNEX 48**

Proclamation No. 8 of 1984

PROCLAMATION No. 8 OF 1984

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.



WILLIAM NIGEL WENBAN-SMITH,  
*Commissioner.*

By William Nigel Wenban-Smith, Commissioner for the British Indian Ocean Territory.

I, William Nigel Wenban-Smith, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State do hereby proclaim and declare that—

1. There is established for the British Indian Ocean Territory a fisheries zone contiguous to the territorial sea of the British Indian Ocean Territory.

2. The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the British Indian Ocean Territory and as its seaward boundary a line drawn so that each point on the line is twelve nautical miles from the nearest point on the low-water line on the coast or other baseline from which the breadth of the territorial sea is measured.

3. Her Majesty will exercise the same exclusive rights in respect of fisheries in the said fisheries zone as She has in respect of fisheries in the territorial sea of the British Indian Ocean Territory, subject to such provisions as may hereafter be made by law for the control and regulation of fishing within the said zone.

4. In this Proclamation "the British Indian Ocean Territory" means the islands of the British Indian Ocean Territory set out in the Schedule to this Proclamation.

5. Proclamation No. 1 of 1969 is hereby revoked.

GOD SAVE THE QUEEN

Given at the Foreign and Commonwealth Office, London this 15<sup>th</sup> day of  
November 1984.

*SCHEDULE*

The Islands of the British Indian Ocean Territory

The Chagos Archipelago consisting of:

Diego Garcia  
Egmont or Six Islands  
Peros Banhos  
Salomon Islands

The Brothers Islands  
Nelson or Legour Island  
Eagle Islands  
Danger Island

**ANNEX 49**

BIOT Ordinance No. 11 of 1984

THE BRITISH INDIAN OCEAN TERRITORY.

Ordinance No.11 of 1984.

An Ordinance to make fresh provision for the control of fishing and the taking of marine product within the fishery limits of the British Indian Ocean Territory and for matters incidental thereto and connected therewith.

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Interpretation.	2.
3.	Control of fishing in fishery limits.	2.
4.	Designation of Foreign Countries.	3.
5.	Licensing of fishing boats.	3.
6.	Exemption for sporting fishing.	3.
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8.	Trial of offences.	4.
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11.	Repeal of Ordinance No.2 of 1971.	5.

# THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No.11 of 1984.

An Ordinance to make fresh provision for the control of fishing and the taking of marine product within the fishery limits of the British Indian Ocean Territory and for matters incidental thereto and connected therewith.

Enacted by the Commissioner for the British Indian Ocean Territory.

1984.

W. N. Wenban-Smith,

Commissioner.

Short title  
and  
commence-  
ment.

1. This Ordinance may be cited as the Fishery Limits Ordinance, 1984, and shall come into operation on such date as the Commissioner may by notice in the Gazette appoint.

Interpret-  
ation.

2. In this Ordinance unless the context otherwise requires— ‘British fishing boat’ means a fishing boat registered as such under Part IV of the Merchant Shipping Act 1894 or under any similar provisions superseding the same;

‘fish’ means fish of any kind found in the sea and includes crustacea and mollusca;

‘fishery limits’ means the territorial waters of the Territory and any fisheries zone contiguous thereto established by the Commissioner by Proclamation published in the Gazette;

‘fishing boat’ means a vessel of whatever size and in whatever way propelled, which is for the time being employed in fishing operations;

‘foreign fishing boat’ means a fishing boat other than a British fishing boat;

‘taking’ and ‘fishing’ and other grammatical variations of those words’ with reference to fish and marine product, include collecting, capturing’ killing and destroying, or attempting to do any of those things;

‘unauthorised fishing gear’ means fishing gear the use of which is prohibited under Regulations or under a licence granted under section 5.

Control of  
fishing in  
fishery  
limits.

3.—(1) Subject to the provisions of this Ordinance, no person on board a fishing boat shall take any fish or marine product within the fishery limits except under and in accordance with the conditions of a licence granted in respect of that fishing boat under section 5, and in the case of a foreign fishing boat unless, in addition, that fishing boat is registered in a country designated under section 4.

(2) If any person contravenes any of the provisions of subsection (1) of



this section, that person and the person in charge of the boat, and, if he is on board that boat, the owner, shall each be guilty of an offence and shall be liable to a fine of £5,000 or to imprisonment for two years, and any fish or marine product and any fishing gear found in the boat or taken or used by any person from the boat, and the boat used in such taking, shall be liable to forfeiture. -

(3) Where any fish, marine product or unauthorised fishing gear is found on board a fishing boat within the fishery limits or where any fish or marine product or unauthorised fishing gear is landed from a fishing boat on any island within the Territory, such fish or marine product shall be deemed to have been taken, or as the case may be, such unauthorised gear shall be deemed to have been used, within the fishery limits by a person on board such fishing boat, until the contrary be proved.

Designation of Foreign Countries. 4. For the purpose of enabling fishing traditionally carried on in any area within the fishery limits by foreign fishing boats to be continued, the Commissioner may by order published in the Gazette, designate any country outside the Territory, and upon such designation any fishing boat registered in such country may take fish and marine product within such areas and subject to such conditions as may be specified in a licence granted under section 5.

Licensing of fishing boats. 5. The Commissioner or an agent authorised by him may grant licences for fishing boats permitting the taking of fish and marine product within the fishery limits. Any such licence may be for such period and in respect of such areas within the fishery limits as the Commissioner may think fit and may contain such conditions as to the descriptions or quantities of fish or marine product which may be taken, the gear which may be used, or as to such other matters, whether similar to the foregoing or not, as the Commissioner may impose, and shall be subject to variation or revocation by the Commissioner in his discretion. Without prejudice to the generality of the foregoing, a licence may be granted for the purposes only of taking of fish or marine product for - commercial research or scientific research.

Exemption for sporting fishing. 6. Nothing in this Ordinance shall prohibit any person lawfully temporarily resident in or visiting the Territory from taking fish or marine product in the course of sport and not for profit in any area in which that activity is not prohibited by the Commissioner's Representative by notice in the Gazette.

Appointment and powers of fisheries inspectors. 7.—(1) The Commissioner may appoint fisheries inspectors for the purposes of this Ordinance. Every Peace Officer shall be ex officio a fisheries inspector.

(2) A fisheries inspector and any person whom he may call to his assistance may at any time stop, go on board and search any fishing boat within the fishery limits, and may require the person in charge, the crew, or any of them, to produce any certificate of registry, licence, official logbook, official paper, article of agreement or any other document relative to the fishing boat or to the crew or any member thereof or to any person on board the fishing boat which is in their respective

possession or control or on board the fishing boat, and may require the person in charge to appear and to give an explanation concerning the fishing boat or its activities or any crew or other person on board the fishing boat or any document mentioned in this subsection. -

(3) If a fisheries inspector has reason to suspect that any person on board a fishing boat has contravened any of the provisions of this Ordinance he may without warrant or other process seize the boat and detain any person found on board, and may take, or require that the person in charge of the boat take, the boat and any persons thereon to any island in the Territory and detain it and them until the alleged contravention is adjudicated upon.

(4) A fisheries inspector and any person whom he may call to his assistance may arrest and detain without warrant any person who such inspector has reason to suspect has committed an offence against this Ordinance.

(5) Any person who assaults, resists or obstructs any fisheries inspector or any person whom he may call to his assistance in the exercise of any of the powers conferred by this section shall be guilty of an offence and shall be liable to a fine of £10,000 or to imprisonment for two years.

(6) A fisheries inspector and any person assisting him and acting under his instructions shall not be liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on him by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Trial of offences.

8.—(1) Where an offence against any of the provisions of this Ordinance is committed within the contiguous fisheries zone referred to in section 2 then, for the purposes of the jurisdiction of any court in the Territory, that offence shall be deemed to have been committed in the Territory.

(2) The jurisdiction conferred by subsection (1) of this section shall be in addition to, and not in derogation of, any jurisdiction or power which is enjoyed by any court in the Territory apart from the provisions of the said subsection.

(3) Notwithstanding anything contained in the Criminal Procedure Code, a Magistrates' Court presided over by either a Senior Magistrate or a Magistrate may impose any fines in respect of offences under this Ordinance, up to those specified as maxima.

Detention of fishing boat on failure to pay or secure fine.

9. In default of payment forthwith of any fine imposed under this Ordinance, the court may order that the person convicted shall give or obtain to be given security for payment thereof, and if security to the satisfaction of the court is not given may order the detention of the fishing boat concerned with the offence in respect of which the fine was imposed; and such fishing boat may accordingly be detained in the Territory until the fine is paid or until sufficient security for its payment is given to the satisfaction of the court.

Regulations.

10. The Commissioner may make regulations to carry out the objects and purposes of this Ordinance, and without prejudice to the generality of the

foregoing, such regulations may make provision as respects— 3

- (a) the types or sizes of fish or marine product which may or may not be taken;
- (b) the types or sizes of fishing gear which may or may not be used;
- (c) any person, vessel or thing detained under this Ordinance;
- (d) the forfeiture of any fish or marine product taken in contravention of section 3;
- (e) the forfeiture of any fish or marine product or any fishing gear or fishing boat used in taking any fish or marine product in contravention of section 3;
- (f) the fees to be paid on the issue of any licence under this Ordinance.

Repeal of  
Ordinance  
No.2 of  
1971.

11. The Fishery Limits Ordinance, 1971 is repealed.

**ANNEX 50**

United Kingdom's Note Verbale of 18 February 1985

063/1

15

JEB 0406

29 MAR 1985


NOTE NO 065/85

The British High Commission present their compliments to the Ministry of External Affairs, Tourism and Emigration and have the honour to refer to the Maritime Zones (Exclusive Economic Zones) Regulations 1984. (12)

With reference to the Second Schedule to the Regulations, the British High Commission have been instructed to state that the Government of the United Kingdom of Great Britain and Northern Ireland do not accept the implications of the schedule as to sovereignty over the Chagos Archipelago. Sovereignty over the Chagos Archipelago, which constitutes the British Indian Ocean Territory, is vested in the United Kingdom of Great Britain and the Northern Ireland. Maritime rights and jurisdiction in respect of the Chagos Archipelago are enjoyed and exercised by the United Kingdom in accordance with applicable legislation and the rules of international law.

The British High Commission avail themselves of this opportunity to renew to the Ministry of External Affairs, Tourism and Emigration, the assurance of their highest consideration.

BRITISH HIGH COMMISSION  
PORT LOUIS

18 February 1985

## **ANNEX 51**

United Kingdom's Note Verbale of 19 February 1985

Copy to Hunt, EAD (12)

p63/1

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NOTE NO. 005/85

The British High Commission present their compliments to the Ministry of External Affairs, Tourism and Emigration and have the honour to refer to the Maritime Zones (Exclusive Economic Zones) Regulations 1984.

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The British High Commission avail themselves of this opportunity to renew to the Ministry of External Affairs, Tourism and Emigration, the assurance of their highest consideration.

BRITISH HIGH COMMISSION  
PORT LOUIS

18 February 1985

## **ANNEX 52**

United Kingdom's Note Verbale of 16 August 1985



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NOTE NO 020/85

27  
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(42)

The British High Commission present their compliments to the Ministry of External Affairs, Tourism and Emigration and have the honour to refer to the Ministry's Note dated 10 May 1985 concerning the Chagos Archipelago.

(21)

The British High Commission have been instructed to reaffirm their Note No 005/85 dated 18 February 1985 concerning United Kingdom sovereignty over the Chagos Archipelago. As Her Majesty's governments have stated publicly, The United Kingdom is willing to cede the Chagos Archipelago to Mauritius when it is no longer needed for defence purposes. Until then, however, the right to exploit resources in and around the Archipelago in accordance with the rules of International Law remains vested in The United Kingdom, and The United Kingdom does not accept that Mauritius enjoys any such right. The United Kingdom therefore sees no need to establish any procedures for monitoring or reviewing these matters.

The British High Commission avail themselves of this opportunity to renew to the Ministry of External Affairs, Tourism and Emigration the assurance of their highest consideration.

BRITISH HIGH COMMISSION  
FLOREAL

16 August 1985

## **ANNEX 53**

High Commissioner's speaking note, 1990

SPEAKING NOTE

1. The Government of the United Kingdom of Great Britain and Northern Ireland has no doubt as to United Kingdom sovereignty over the British Indian Ocean Territory. The British Indian Ocean Territory currently maintains a territorial sea of 3 miles and a fisheries limit of 12 miles around the Territory. Access by fishing boats to within the 12 mile limit is strictly confined by the BIOT authorities to Mauritian traditional fishing boats.

2. The United Kingdom does not recognise the Exclusive Economic Zone around the British Indian Ocean Territory which the Mauritian authorities purported to declare in 1984. A Note of protest regarding this declaration was sent by the British High Commission to the Ministry of External Affairs, Tourism and Emigration on 18 February 1985. The United Kingdom authorities are therefore concerned to learn that certain foreign fishing vessels have been prosecuted in the Mauritian Courts for fishing within 200 miles of the British Indian Ocean Territory.

3. The matter of an exclusive fishing zone around the British Indian Ocean Territory is for the United Kingdom to determine.

BRITISH HIGH COMMISSION

August 1990

## **ANNEX 54**

Declaration of intent issued by the BIOT, 7 August 1991

JEB OLLI

00 463 1991

(267)

The Foreign and Commonwealth Office presents its compliments to the High Commission of Mauritius and wishes to advise the High Commission that the Commissioner of the British Indian Ocean Territory will declare on 7 August 1991 the intention to extend from 12 to 200 miles the Fishing Zone around the British Indian Ocean Territory, in accordance with international law and practice. This will come into effect on 1 October 1991.

There are good environmental reasons for this action. Tuna stocks migrate around the Indian Ocean, large numbers passing through the area to be included in the 200 mile zone. In the view of the British Government on the advice of technical experts, it is important that these waters are subject to regulatory control through licensing. If we fail to exercise our responsibilities stocks will dwindle to the detriment of other Indian Ocean states and territories. It is important also that we conserve the stock position and so protect the future fishing interests of the Chagos Group. An extension of the Zone will allow the application of regulations relating to types of net and fishing gear.

In view of the traditional fishing interests of Mauritius in the waters surrounding British Indian Ocean Territory, a limited number of licences free of charge have been offered to artisanal fishing companies for inshore fishing. We shall continue to offer a limited number of licences free of charge on this basis.

The Foreign and Commonwealth Office appreciates that this development will be of interest to fishing companies in Mauritius and we shall be inviting expressions of interest after the announcement is made on 7 August 1991.

ISLACC

..../The

The Foreign and Commonwealth Office avails itself of this opportunity to express to the High Commission the assurance of its highest consideration.

FOREIGN AND COMMONWEALTH OFFICE  
LONDON SW1A 2AH

5 August 1991

JEB OULL

01 AUG 1991

(361)

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ISLACC

..../The

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FOREIGN AND COMMONWEALTH OFFICE

LONDON SW1A 2AH

5 August 1991





BRITISH INDIAN OCEAN TERRITORY FISHERIES CONSERVATION AND  
MANAGEMENT ZONE: DECLARATION OF INTENT

As the Commissioner of the British Indian Ocean Territory, I intend to declare a Fisheries Zone, extending to a maximum of 200 nautical miles, to be known as the British Indian Ocean Territory Fisheries Conservation and Management Zone. Effect shall be given to this decision by means of a Proclamation establishing the Zone on 1 October 1991. An Ordinance will make provision for the regulation, conservation and management of the Zone with effect from that date. Only those vessels and persons duly licensed may undertake fishing activities.

The purpose of this declaration of intent is to offer those nations with particular interests in the area around BIOT advance notice of the British Government's intentions and actions on this matter. Since those principal interests are likely to be fishing activities for tuna and billfish, it is the intent of the British Government to establish a fisheries regime that will ensure conservation of marine resources consistent with international law and practice while allowing authorised access to them.

A key objective in declaring the Zone is the protection and conservation of marine resources. Industrial tuna fisheries



in the region have risen to a level that has generated concern about the future expansion and the stability and sustainability of tuna stocks. It is now a regional development and management issue with which the British Government is directly involved through its responsibility for BIOT.

The Chagos Archipelago of BIOT is also an untouched reef system which demands a responsible approach to conservation and the protection of its environment and the life it supports.

The fisheries regime will be established in two phases: an interim licensing arrangement, beginning on 1 October 1991, for a period of 6 months: followed by a fisheries licensing regime, beginning on 1 April 1992.

Legal instruments are being drafted that, among other things, declare the terms and conditions under which vessels may operate (fish or search for fish) while within the new BIOT Fisheries Zone. It is the intention of the British Government to adopt licensing terms and conditions that are consistent with modern fisheries management and that are no more onerous than elsewhere.

The Marine Resources Assessment Group Ltd of 27 Campden Street, London, W8 7EP (Tel:071-225-3666; Fax: 071-589-5319)

RW3ACH



have been appointed to advise on and manage both phases of the fisheries regime. Fishing organisations and companies will wish to contact them directly well in advance to ensure that administrative matters are dealt with effectively and in a timely manner.

Signed

H. M. Commissioner

7 August 1991.

**ANNEX 55**

Tuna fishing application form

# BRITISH INDIAN OCEAN TERRITORY



## LONGLINER FISHING VESSEL NOTIFICATION

### APPLICATION FORM

To : Director of Fisheries, British Indian Ocean Territory

c/o Marine Resources Assessment Group Ltd  
47, Prince's Gate  
London SW7 2QA  
United Kingdom

Tel : + 44 207 594 9888 Fax : +44 207 823 7916

I, \_\_\_\_\_ owner / charterer / agent, of the longline tuna fishing vessel \_\_\_\_\_, hereby make notification of the aforementioned vessel for the purpose of future fishing in the British Indian Ocean Territory fishing waters. I understand that notification of vessel details is a requirement prior to fishing licence application and I declare that the information given in the attached schedule is to the best of my belief accurate and true. I understand that, if any of the information changes, I must inform you not later than 30 days after the change has taken place and that failure to do so may lead to a penalty.

\_\_\_\_\_  
DATE \_\_\_/\_\_\_/\_\_\_

( Signature of Owner / Charterer / Agent )

# SCHEDULE OF VESSEL DETAILS

1

VESSEL NAME

2

INTERNATIONAL RADIO CALL SIGN

3

COUNTRY OF REGISTRATION

4

COUNTRY REGISTRATION NUMBER

5

## 1 LEGAL PERSONALITIES

	OWNER	CHARTERER	AGENT
NAME			
ADDRESS			
CITY			
COUNTRY			
TELEPHONE			
FAX			
TELEX			
E - MAIL			

## 2 VESSEL CHARACTERISTICS

6	<b>VESSEL TYPE</b>	Longliner :	<input type="text"/>
7		Other (Specify e.g Reefer) :	<input type="text"/>
8	<b>CONSTRUCTION</b>	Year :	<input type="text"/>
9		Place :	<input type="text"/>
10	<b>TECHNICAL</b>	Hull Material :	<input type="text"/>
11		Gross Registered Tonnage :	<input type="text"/>
12		Convention Used for Measurement of G.R.T. :	<input type="text"/>
13		Overall Length (Metres) :	<input type="text"/>
14		Main Engine (Horse Power) :	<input type="text"/>
15		Fuel Capacity (Kilolitres) :	<input type="text"/>

### 16 FISH STORAGE

DAILY FREEZING CAPACITY (mT)	
FREEZING METHOD	
FREEZING TEMPERATURE (_C)	
STORAGE TEMPERATURE (_C)	
TOTAL STORAGE CAPACITY (mT)	

### 3 VESSEL OPERATIONS

17

#### LONGLINERS

Hooks per Day:

18

Average Set Depth (Metres) :

19

Normal Trip Length (Days) :

20

Number of Crew :

21

#### PORTS :

Base Port	
Transshipment Port(s)	
Unloading Port(s)	

### 4 VESSEL COMMUNICATIONS AND ELECTRONICS

#### RADIO COMMUNICATIONS

22

International Call Sign :

23

Normal Transmitting Frequencies :

#### SATELLITE COMMUNICATIONS

24

Type of Equipment :

25

Access Code and Number :



Notes

**TRANSPONDERS**

26. Type :

27. Identifying Code :

28. **POSITION DETERMINING EQUIPMENT** LORAN :

29. OMEGA :

30. DECCA :

31. GPS :

32. **OTHER EQUIPMENT** Radio Buoys :

33. EPIRB's :

# Longliner Fishing Vessel Notification Application Form

## Guidance Notes for Completion

### General :

All information required (where applicable to a particular vessel) must be entered correctly and carefully. Failure to do so may cause delays to notification and therefore to the ability to apply for a licence. Note that no notification or licence application will be accepted on this form by vessels that are not longliners.

Please also enclose with this application a side view photograph of the whole vessel (colour or black and white, at least (10 x 7 cm)), and a copy of the International Tonnage Certificate.

### Note No :

- 1 **Vessel Name :** Enter in English, include any number or letter used to identify particular vessel e.g., Kobayashi Maru.
- 2 **International Radio Call Sign:** Enter the code of numbers and letters issued by the country of registration according to the rules of the International Telecommunications Union.
- 3 **Country of Registration:** Enter the country where the vessel is officially registered.
- 4 **Country Registration Number:** Enter the number (including letters) issued by the registering country.
- 5 **Legal Personalities:** Enter the names and communication details (as described and where applicable) of the owner, charterer and agent. (Note: Since fishing master may change from trip to trip the details of that person will be required during licence application).

### Vessel Characteristics

- 6 **Longliner:** If this type indicate with an X.
- 7 **Other (Specify):** Specify what type of vessel. e.g Support Vessel, Reefer.
- 8 **Construction Year:** Year of Construction.
- 9 **Construction Place:** Place of Construction.
- 10 **Hull Material:** Type e.g. Steel, GRP, Wood, Ferroconcrete.
- 11 **Gross Registered Tonnage:** The tonnage of the vessel as recorded on the country registration document.
- 12 **Convention Used for Measurement of GRT:** Which convention is used e.g. IMO 1969 etc.
- 13 **Overall Length (Metres):** The overall length as recorded on the country registration document.
- 14 **Main Engine (Horse Power):** The horse power rating of the main engine.
- 15 **Fuel Capacity (Kilolitres):** Fuel capacity at full.
- 16 **Fish Storage:** Enter the daily freezing capacity (mT) and method (e.g. Brine, Blast etc), freezing temperature and storage temperature, and the total storage capacity in metric tonnes of fish.

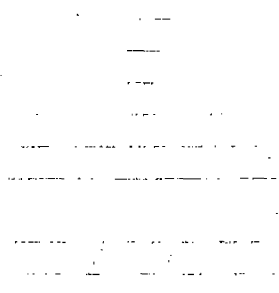
## Vessel Operations

- 17 **Hooks per Day:** Enter average number of hooks set on a longline each day.
- 18 **Average Set Depth (Metres):** Depth in metres at which hooks are set.
- 19 **Normal Trip Length (Days):** The number of days between leaving base/transshipment/or unloading port and returning with a full load of fish.
- 20 **Number of Crew:** Number of personnel including all officers, deck crew and pilots.
- 21 **Port(s):** Enter the base or home port and the transshipment and unloading ports (if different) used following a fishing trip.

## Vessel Communications and Electronics

- 22 **International Radio Call Sign:** As 2 above.
- 23 **Normal Transmitting Frequencies:** Enter the frequencies / channels that vessel normally use communications with base port and national authorities.
- 24 **Type of Equipment:** Enter type, make and model of satellite communication equipment INMARSAT A, INMARSAT C, etc.
- 25 **Access Code and Number:** Enter codes and numbers for access to voice / fax etc.
- 26 **Type:** Enter type of transponder, if any.
- 27 **Identifying Code:** Enter transponder identifying code.
- 28-31 **Position Determining Equipment:** Check the types of position determining and navigational equipment used on board the vessel.
- 32 **Radio Buoys:** Enter number and identifying marks of radio buoys used in fishing, if any.
- 33 **Emergency Position Indicating Radio Beacons (EPIRB's):** Check here if available.

# BRITISH INDIAN OCEAN TERRITORY



## FISHING VESSEL LICENCE APPLICATION FORM

To : Director of Fisheries, British Indian Ocean Territory

c/o Marine Resources Assessment Group Ltd  
47, Prince's Gate  
London SW7 2QA  
United Kingdom

Tel: + 44 207 594 9888 Fax: + 44 207 823 7916

I, \_\_\_\_\_ owner / charterer / agent, of the longline tuna fishing vessel \_\_\_\_\_, hereby make application for a licence to undertake fishing in the British Indian Ocean Territory fishing waters.

The BIOT Fishing Vessel Notification Number for this Vessel is:

**Fishing Activity**

Dates for which this licence is required:

to

**Fishing Master During Licence Period :**

**Address :**

**Telephone :**

**Fax :**

DATE \_\_ / \_\_ / \_\_

(Signature of Owner / Charterer / Agent)

# Fishing Vessel Licence Application Form

## Guidance Notes for Completion

- 1 Enter the name of the owner, charterer or agent of the vessel.
- 2 Indicate whether it is the owner, charterer or agent by circling one.
- 3 Enter the name of the vessel.
- 4 Enter the BIOT Fishing Vessel Notification number of the vessel in the box indicated.
- 5 Enter the date from which the licence is required.
- 6 Enter the date to which the licence is required.
- 7 Enter the full name of the fishing master during the licence period.
- 8 Enter the address, telephone and fax number of the fishing master.
- 9 Sign and date the form and indicate whether owner, charterer or agent by circling one

# BRITISH INDIAN OCEAN TERRITORY



## FISHING VESSEL LICENCE

Issued by  
**the Director of Fisheries**  
on behalf of the  
**Commissioner for the British Indian Ocean Territory**

I, \_\_\_\_\_, Director of Fisheries, hereby authorise the tuna fishing vessel:

\_\_\_\_\_ **SAMPLE ONLY** \_\_\_\_\_ [BIOT Notification No: \_\_\_\_\_]

to fish within the British Indian Ocean Territory fishing waters under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER: \_\_\_\_\_

DATES OF VALIDITY OF THIS LICENCE: From \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

To \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_ DATE \_\_\_/\_\_\_/\_\_\_

Director of Fisheries

All communications concerning this licence should be addressed to:

The Director of Fisheries  
c/o Marine Resources Assessment Group Limited  
47, Prince's Gate, LONDON SW7 2QA, UK  
Tel: +44 207 594 9888 Fax: +44 207 823 7916

## TERMS AND CONDITIONS OF LICENSING

The following are the terms and conditions subject to which this licence is granted. Failure to comply with these terms and conditions applied to the licence is an offence under the Fisheries (Conservation and Management) Ordinance 1991 and may result in the withdrawal of the licence and further restrictions in relation to the issue of licences for future fishing activities in the British Indian Ocean Territory.

The master, owner and charterer of the vessel in respect of which the licence is granted shall :

### COMPLIANCE WITH LEGISLATION

- comply with the Fisheries (Conservation and Management) Ordinance 4 1998;

### COMPLIANCE WITH ADMINISTRATION DOCUMENTATION AND GUIDANCE

- comply with any requirement imposed by or under the Administration Documentation and Guidance issued by or on behalf of the Director of Fisheries, as amended from time to time;

### VESSEL REPORTING

- provide the required reports in the prescribed manner and according to the prescribed schedule to the Director of Fisheries;
- complete fishing logsheets in English on a daily basis and on the prescribed forms and certify that this information is true, complete and accurate;
- provide biological and other details of fish taken on board during fishing operations when required to do so by the Director of Fisheries;
- submit fishing operations reports in the prescribed format and schedule to the BIOT Director of Fisheries.

### FISHERIES PROTECTION OFFICERS AND OBSERVERS

- allow and assist any person identified as a Fisheries Protection Officer or as an observer to:
  - (i) board the vessel for scientific, compliance, monitoring or other functions;
  - (ii) embark and disembark at a place and time agreed to;
  - (iii) have full access to and use of all information, facilities and equipment on board which the observer may determine is necessary to carry out his/her duties; without prejudice to the generality of the foregoing, this includes access to the fish on board and facilities for their inspection and measurement and the removal of samples; access to vessel records and logs; access to navigation equipment, charts and communications equipment; and access to a other information related to fishing;
- not assault or obstruct a Fisheries Protection Officer or an observer in the performance of his or her duties;
- provide the Fisheries Protection Officer and/or Fisheries Observer, while on board the vessel, with officer level accommodation, food and medical facilities at no cost to the Fisheries Protection Officer, Fisheries Observer or the BIOT Authorities;

### AGENTS

- appoint and maintain an agent, in a country agreed by the Director of Fisheries, who shall have authority to receive and respond to any legal process shall be deemed that any communication, information, document, request or response that is made or given to that agent is made or given to the owner and operators, and that any communication, information, document, request or response that is made or given by that agent is made or given with the knowledge and approval of the owners and operators;

### TRANSIT

- ensure that while the fishing vessel is navigating through ("transiting") the BIOT fishing waters during periods when the vessel is not fishing, or is transiting closed areas, all fishing gear on board is stowed or secured in such a manner that it is not readily available to use for fishing;

### FISHERIES INSPECTION

- ensure that he and his crew immediately comply with every instruction and direction given by an authorised Fisheries Protection Officer or observer including to stop, to move to a prescribed location, to facilitate safe boarding and inspection of the vessel, its licence, fishing gear and equipment, catch fish and fish products;
- assist in any action by an authorised Fisheries Protection Officer or observer and shall not assault, obstruct, delay, intimidate or interfere in performance of his or her duties;
- ensure that the HF radio frequency currently used for communications with the BIOT Fisheries Protection Vessel is monitored during the prescribed schedule;
- ensure the continuous monitoring of the international maritime distress and calling frequency 2182 KHz (HF) and the international safety and call frequency 156.8 MHz (channel 16, VHF-FM);
- ensure that a current copy of the International Code of Signals is on board at all times;
- ensure that his vessel has identification marks in accordance with the FAO approved Standard Specifications for the Marking and Identification of Fish Vessels. (Summary details of these standard specifications are in Annex 12);

### FISHING GEAR

- ensure that all fishing gear deployed by the vessel is marked with the International Radio Call Sign of the vessel;

### LICENCE

- ensure that the Fishing Licence for the current period of licensed operation is prominently displayed in the bridge of the vessel, except that if the vessel is put to sea prior to receipt of the licence a record shall be kept of the Licence Number and shall be produced to an authorised officer or communicated through radio on demand;

### CLOSED AREAS

- ensure that the fishing vessel does not operate less than 12 nautical miles from the nearest point of land, nor that the fishing gear when deployed is allowed to drift within that boundary;
- ensure that the vessel does not operate in any closed area as may be specified from time to time by the Director of Fisheries in writing or through communications with the BIOT authorities;

### FISH SPECIES

- ensure that all fishing gear is deployed in a manner that targets only tunas, tuna like species and those species that are generally caught incidentally thereto; and
- ensure that all fishing gear is deployed in a manner that avoids or minimises the catching or damage to species of fish or other marine creatures that are not the target species of the tuna fishing operations;

### CONSERVATION

- ensure that neither he nor any member of his crew, otherwise than in the proper course of fishing as authorised by the licence, takes damages or otherwise interferes with any wildlife (as defined in the Protection and Preservation of Wild Life Ordinance 1970, as from time to time amended) within BIOT (in its fishing waters) and in particular that he and every member complies with that Ordinance (as so amended), with any Regulations or other instruments made thereunder as for the time being in force and with any other law for the time being in force in BIOT regulating the protection or preservation of wildlife in BIOT.

### OUTSTANDING FEES

- ensure prompt payment, after the expiry of this licence, of any fees then due for this licence;

### SPECIAL CONDITIONS

- ensure that any special terms and conditions attached to the licence have been read, understood, and are complied with.

## BRITISH INDIAN OCEAN TERRITORY



PURSE SEINE FISHING VESSEL NOTIFICATION  
APPLICATION FORM

To : Director of Fisheries, British Indian Ocean Territory

c/o Marine Resources Assessment Group Ltd  
47 Prince's Gate  
London SW7 2QA  
United Kingdom

Tel : + 44 207 594 9888 Fax : +44 207 823 7916

\_\_\_\_\_, owner / charterer / agent, of the longline / purse seine tuna fishing vessel \_\_\_\_\_, hereby make notification of the aforementioned vessel for the purpose of future fishing in the British Indian Ocean Territory fishing waters. I understand that notification of vessel details is a requirement prior to fishing licence application. I declare that the information given in the attached schedule is to the best of my belief accurate and true. I understand that, if any of the information changes, I must inform you not later than 30 days after the change has taken place and that failure to do so may lead to a penalty.

\_\_\_\_\_  
DATE \_\_\_ / \_\_\_ / \_\_\_

( Signature of Owner / Charterer / Agent )



Notes

# SCHEDULE OF VESSEL DETAILS

1

VESSEL NAME

2

INTERNATIONAL RADIO CALL SIGN

3

COUNTRY OF REGISTRATION

4

COUNTRY REGISTRATION NUMBER

5

LEGAL PERSONALITIES

	OWNER	CHARTERER	AGENT
NAME			
ADDRESS			
CITY			
COUNTRY			
TELEPHONE			
FAX			
TELEX			
E - MAIL			

Notes

## 2 VESSEL CHARACTERISTICS

6

### VESSEL TYPE

Purse Seine :

7

Other (Specify e.g Reefer) :

8

### CONSTRUCTION

Year :

9

Place :

10

### TECHNICAL

Hull Material :

11

Gross Registered Tonnage :

12

Convention Used for Measurement of G.R.T. :

13

Overall Length (Metres) :

14

Main Engine (Horse Power) :

15

Fuel Capacity (Kilolitres) :

16

### FISH STORAGE

DAILY FREEZING CAPACITY mT	
FREEZING METHOD	
FREEZING TEMPERATURE °C	
STORAGE TEMPERATURE °C	
TOTAL STORAGE CAPACITY mT	

**3 VESSEL OPERATIONS****17 PURSE SEINERS**Net Length (Metres): 

18

Net Depth (Metres): 

19

Dolphin Escape Panel: 

20

Normal Trip Length (Days): 

21

Number of Crew: 

22

Number of Speedboats: 

23

**Helicopter**Make: 

24

Range (Kilometres): 

25

Registration No: 

26

International Radio Call Sign: 

27

**PORTS :**

Base Port	<input type="text"/>
Transshipment Port(s)	<input type="text"/>
Unloading Port(s)	<input type="text"/>

**FISHING SUPPORT VESSEL**

28

Number of Crew: 

29

Type of Vessel (Describe): 

30

Function of Vessel (Describe): 

31

**PORTS :**

Base Port	<input type="text"/>
-----------	----------------------

## 4 VESSEL COMMUNICATIONS AND ELECTRONICS

### RADIO COMMUNICATIONS

32

International Call Sign :

33

Normal Transmitting Frequencies :

### SATELLITE COMMUNICATIONS

34

Type of Equipment :

35

Access Code and Number :

### TRANSPONDERS

36

Type :

37

Identifying Code :

38

### POSITION DETERMINING EQUIPMENT

LORAN :

39

OMEGA :

40

DECCA :

41

GPS :

42

### OTHER EQUIPMENT

Radio Buoys :

43

EPIRB's :

# Purse Seine Fishing Vessel Notification Application Form

## Guidance Notes for Completion

### General :

All information required (where applicable to a particular vessel) must be entered correctly and carefully. Failure to do so may cause delays to notification and therefore to the ability to apply for a licence. Note that no notification or licence application will be accepted by vessels that are not tuna purse seiners or their support vessels.

Please also enclose with this application a side view photograph of the whole vessel (colour or black and white, at least (10 x 7 cm)), and a copy of the International Tonnage Certificate.

### Note No:

- 1 **Vessel Name :** Enter in English, include any number or letter used to identify particular vessel e.g., Lady Sushil II etc.
- 2 **International Radio Call Sign:** Enter the code of numbers and letters issued by the country of registration according to the rules of the International Telecommunications Union.
- 3 **Country of Registration:** Enter the country where the vessel is officially registered.
- 4 **Country Registration Number:** Enter the number (including letters) issued by the registering country.
- 5 **Legal Personalities:** Enter the names and communication details (as described and where applicable) of the owner, charterer and agent. (Note: Since fishing master may change from trip to trip the details of that person will be required during licence application).

### Vessel Characteristics:

- 6 **Purse Seine:** If this type indicate with an X.
- 7 **Other (Specify):** Specify what type of vessel. e.g Support Vessel, Reefer.
- 8 **Construction Year:** Year of Construction.
- 9 **Construction Place:** Place of Construction.
- 10 **Hull Material:** Type e.g. Steel, GRP, Wood, Ferroconcrete.
- 11 **Gross Registered Tonnage:** The tonnage of the vessel as recorded on the country registration document.
- 12 **Convention Used for Measurement of GRT:** Which convention is used e.g. IMO 1969 etc.
- 13 **Overall Length (Metres):** The overall length as recorded on the country registration document.
- 14 **Main Engine (Horse Power):** The horse power rating of the main engine.
- 15 **Fuel Capacity (Kilolitres):** Fuel capacity at full.
- 16 **Fish Storage:** Enter the daily freezing capacity (mT) and method (e.g. Brine, Blast etc), freezing temperature and storage temperature, and the total storage capacity in metric tonnes of fish.

### Vessel Operations:

- 17 **Net Length (Metres):** Enter the overall length of the purse seine net in metres.
- 18 **Net Depth (Metres):** Enter the maximum depth of the net in metres.
- 19 **Dolphin Escape Panel:** Indicate with an X if net has a dolphin escape panel, if not leave blank.
- 20 **Normal Trip Length (Days):** The number of days between leaving base/transshipment/or unloading port and returning with a full load of fish.
- 21 **Number of Crew:** Number of personnel including all officers, deck crew and pilots.
- 22 **Number of Speedboats:** Enter number of speedboats used in purse seine operation.
- 23 **Helicopter (Make):** Enter make and model of helicopter used if any.
- 24 **Range (Km):** Enter total overall flying range in kilometres.
- 25 **Registration Number:** Enter registration number of helicopter that appears in its country registration documents.
- 26 **International Radio Call Sign:** As 2 above.
- 27 **Port(s):** Enter the base or home port and the transshipment and unloading ports (if different) usually used following a fishing trip.
- 28 **Number of Crew:** As 21 above.
- 29 **Type of Vessel:** Provide a brief description of the type of vessel.
- 30 **Function of Vessel:** Describe the function of the vessel in the BIOT fishing waters.
- 31 **Base Port:** As 27 above.

### Vessel Communications and Electronics:

- 32 **International Radio Call Sign:** As 2 above.
- 33 **Normal Transmitting Frequencies:** Enter the frequencies / channels that vessel normally uses for communications with base port and national authorities.
- 34 **Type of Equipment:** Enter type, make and model of satellite communication equipment e.g. INMARSAT A, INMARSAT C, etc.
- 35 **Access Code and Number:** Enter codes and numbers for access to voice / fax etc.
- 36 **Type:** Enter type of transponder, if any.
- 37 **Identifying Code:** Enter transponder identifying code.
- 38-41 **Position Determining Equipment:** Check the types of position determining and navigation equipment used on board the vessel.
- 42 **Radio Buoys:** Enter number and identifying marks of radio buoys used in fishing, if any.
- 43 **Emergency Position Indicating Radio Beacons (EPIRB's):** Check here if available.



BRITISH INDIAN OCEAN TERRITORY



FISHING VESSEL LICENCE APPLICATION FORM

To : Director of Fisheries, British Indian Ocean Territory

c/o Marine Resources Assessment Group Ltd  
47, Prince's Gate  
London SW7 2QA  
United Kingdom

Tel : + 44 207 594 9888 Fax : + 44 207 823 7916

I, \_\_\_\_\_ owner / charterer / agent, of the purse seine tuna fishing vessel \_\_\_\_\_, hereby make application for a licence to undertake fishing in the British Indian Ocean Territory fishing waters.

The BIOT Fishing Vessel Notification Number for this Vessel is :

Fishing Activity

Dates for which this licence is required:

to

Fishing Master During Licence Period :

Address :

Telephone :

Fax :

DATE \_\_\_/\_\_\_/\_\_\_

( Signature of Owner / Charterer / Agent )



# Fishing Vessel Licence Application Form

## Guidance Notes for Completion

- 1 Enter the name of the owner, charterer or agent of the vessel.
- 2 Indicate whether it is the owner, charterer or agent by circling one.
- 3 Enter the name of the vessel.
- 4 Enter the BIOT Fishing Vessel Notification number of the vessel in the box indicated.
- 5 Enter the date from which the licence is required.
- 6 Enter the date to which the licence is required.
- 7 Enter the full name of the fishing master during the licence period.
- 8 Enter the address, telephone and fax number of the fishing master.
- 9 Sign and date the form and indicate whether owner, charterer or agent by circling one.

# BRITISH INDIAN OCEAN TERRITORY



## FISHING VESSEL LICENCE

Issued by

**the Director of Fisheries**

on behalf of the

**Commissioner for the British Indian Ocean Territory**

I, \_\_\_\_\_, Director of Fisheries, hereby authorise the tuna fishing vessel:

\_\_\_\_\_ **SAMPLE ONLY** \_\_\_\_\_ [BIOT Notification

No: \_\_\_\_\_]

to fish within the British Indian Ocean Territory fishing waters under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER: \_\_\_\_\_

DATES OF VALIDITY OF THIS LICENCE: From \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

To \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ DATE \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Director of Fisheries

All communications concerning this licence should be addressed to:

The Director of Fisheries  
c/o Marine Resources Assessment Group Limited  
47, Prince's Gate, LONDON SW7 2QA, UK  
Tel: +44 207 594 9888 Fax: +44 207 823 7916

The following are the terms and conditions subject to which this licence is granted. Failure to comply with these terms and conditions applied to the licence is an offence under the Fisheries (Conservation and Management) Ordinance 1991 and may result in the withdrawal of the licence and further restrictions in relation to the issue of licences for future fishing activities in the British Indian Ocean Territory.

The master, owner and charterer of the vessel in respect of which the licence is granted shall :

**COMPLIANCE WITH LEGISLATION**

- comply with the Fisheries Ordinance and Fishing Regulations 1993;

**COMPLIANCE WITH ADMINISTRATION DOCUMENTATION AND GUIDANCE**

- comply with any requirement imposed by or under the Administration Documentation and Guidance issued by or on behalf of the Director of Fisheries, as amended from time to time;

**VESSEL REPORTING**

- provide the required reports in the prescribed manner and according to the prescribed schedule to the Director of Fisheries;
- complete fishing logsheets in English on a daily basis and on the prescribed forms and certify that this information is true, complete and accurate;
- provide biological and other details of fish taken on board during fishing operations when required to do so by the Director of Fisheries;
- submit fishing operations reports in the prescribed format and schedule to the BIOT Director of Fisheries.

**FISHERIES PROTECTION OFFICERS AND OBSERVERS**

- allow and assist any person identified as a Fisheries Protection Officer or as an observer to:
  - (i) board the vessel for scientific, compliance, monitoring or other functions;
  - (ii) embark and disembark at a place and time agreed to;
  - (iii) have full access to and use of all information, facilities and equipment on board which the observer may determine is necessary to carry out his or her duties; without prejudice to the generality of the foregoing, this includes access to the fish on board and facilities for their inspection and measurement and the removal of samples; access to vessel records and logs; access to navigation equipment, charts and communications equipment; and access to any other information related to fishing;
- not assault or obstruct a Fisheries Protection Officer or an observer in the performance of his or her duties;
- provide the Fisheries Protection Officer and/or Fisheries Observer, while on board the vessel, with officer level accommodation, food and medical facilities at no cost to the Fisheries Protection Officer, Fisheries Observer or the BIOT Authorities;

**AGENTS**

- appoint and maintain an agent, in a country agreed by the Director of Fisheries, who shall have authority to receive and respond to any legal process. It shall be deemed that any communication, information, document, request or response that is made or given to that agent is made or given to the owners and operators, and that any communication, information, document, request or response that is made or given by that agent is made or given with the knowledge and approval of the owners and operators;

**TRANSIT**

- ensure that while the fishing vessel is navigating through ("transiting") the BIOT fishing waters during periods when the vessel is not fishing, or is transiting closed areas all fishing gear on board is stowed or secured in such a manner that it is not readily available to use for fishing;

**FISHERIES INSPECTION**

- ensure that he and his crew immediately comply with every instruction and direction given by an authorised Fisheries Protection Officer or observer, including to stop, move to a prescribed location, to facilitate safe boarding and inspection of the vessel, its licence, fishing gear and equipment, records, fish and fish products;
- assist in any action by an authorised Fisheries Protection Officer or observer and shall not assault, obstruct, delay, intimidate or interfere in the performance of his or her duties;
- ensure that the HF radio frequency currently used for communications with the BIOT Fisheries Protection Vessel is monitored during the prescribed time schedule;
- ensure the continuous monitoring of the international maritime distress and calling frequency 2182 KHz (HF) and the international safety and calling frequency 156.8 MHz (channel 16, VHF-FM);
- ensure that a current copy of the International Code of Signals is on board at all times;
- ensure that his vessel has identification marks in accordance with the FAO approved Standard Specifications for the Marking and Identification of Fishing Vessels (Summary details of these standard specifications are in Annex 12);

**LICENCE**

- ensure that the Fishing Licence for the current period of licensed operation is prominently displayed in the bridge of the vessel, except that if the vessel has put to sea prior to receipt of the licence a record shall be kept of the Licence Number and shall be produced to an authorised officer or communicated through radio on demand;

**CLOSED AREAS**

- ensure that the fishing vessel does not operate less than 12 nautical miles from the nearest point of land, nor that the fishing gear when deployed is allowed to drift within that boundary;
- ensure that the vessel does not operate in any closed area as may be specified from time to time by the Director of Fisheries in writing or through radio communication with the BIOT authorities;

**FISH SPECIES**

- ensure that all fishing gear is deployed in a manner that targets only tunas, tuna like species and those species that are generally caught incidentally thereto; and
- ensure that all fishing gear is deployed in a manner that avoids or minimises the catching or damage to species of fish or other marine creatures that are not the target species of the tuna fishing operations;

**CONSERVATION**

- ensure that neither he nor any member of his crew, otherwise than in the proper course of fishing as authorised by the licence, takes damages or otherwise interferes with any wildlife (as defined in the Protection and Preservation of Wild Life Ordinance 1970, as from time to time amended) within BIOT (including its fishing waters) and that he and every member complies with that Ordinance (as so amended), with any Regulations or other instrument made thereunder as for the time being in force and with any other law for the time being in force in BIOT regulating the protection or preservation of wildlife in BIOT.

**OUTSTANDING FEES**

- ensure prompt payment, after the expiry of this licence, of any fees then due for this licence;

**SPECIAL CONDITIONS**

- ensure that any special terms and conditions attached to the licence have been read, understood, and are complied with.

## **ANNEX 56**

Post-1991 inshore fishing licence

# BRITISH INDIAN OCEAN TERRITORY



## INSHORE FISHING VESSEL NOTIFICATION

### APPLICATION FORM

To : Director of Fisheries, British Indian Ocean Territory

c/o Marine Resources Assessment Group Ltd  
8 Prince's Gardens  
London SW7 1NA  
United Kingdom

Tel : 071 - 225 3666 Fax : 071 - 823 7916

I, \_\_\_\_\_ owner of the inshore fishing vessel :  
\_\_\_\_\_, hereby make notification of the aforementioned vessel  
for the purpose of future fishing in the Fisheries Conservation and Management Zone  
of the British Indian Ocean Territory. I understand that notification of vessel details is  
a requirement prior to fishing licence application.

I declare that the information given in the attached schedule is to the best of my belief  
accurate and true. I understand that, if any of the information changes, I must inform  
you not later than 30 days after the change has taken place and that failure to do so  
may lead to a penalty.

\_\_\_\_\_ DATE \_\_ / \_\_ / \_\_

( Signature of Owner / Charterer / Agent )

# SCHEDULE OF INSHORE FISHING VESSEL DETAILS

Notes

1

VESSEL NAME :

2

INTERNATIONAL RADIO CALL SIGN :

3

COUNTRY OF REGISTRATION :

4

COUNTRY REGISTRATION NUMBER :

5

PORTS :

Base Port	
Transshipment Port(s)	
Unloading Port(s)	

6

## LEGAL PERSONALITIES

	OWNER	CHARTERER	AGENT
NAME			
ADDRESS			
CITY			
COUNTRY			
TELEPHONE			
FAX			
TELEX			

## VESSEL CHARACTERISTICS

7

GROSS REGISTERED TONNAGE :

8

CONVENTION USED FOR MEASUREMENT OF G.R.T. :

- 9 OVERALL LENGTH (Metres) :
- 10 OVERALL WIDTH (Metres) :
- 11 DRAFT (Metres) :
- 12 MAIN ENGINE (Horse Power) :
- 13 FUEL CAPACITY (Kilolitres) :
- 14 YEAR OF CONSTRUCTION :

15 FISH STORAGE

FREEZING METHOD		DAILY FREEZING CAPACITY mT	
FREEZING TEMPERATURE °C		OTHER STORAGE METHODS AND CAPACITY mT	
STORAGE TEMPERATURE °C		TOTAL FISH STORAGE CAPACITY mT	

**VESSEL OPERATIONS**

- 16 NUMBER OF CATCHER BOATS (DORIES) :
- 18 AVERAGE LENGTH OF DORIES (Metres) :
- 17 NUMBER OF FISHERMEN :
- 18 NUMBER OF NON-FISHING CREW :
- 19 TOTAL NUMBER OF CREW :
- 20 NORMAL TRIP LENGTH (Days) :

21

**FISHING METHODS USED :**


22

**VESSEL COMMUNICATIONS :**

INTERNATIONAL RADIO CALL SIGN		POSITION DETERMINING EQUIPMENT	
NORMAL RADIO TRANSMITTING FREQUENCIES :		LORAN	
		OMEGA	
		DECCA	
		GPS	
SATELLITE COMMUNICATIONS TYPE :		RADIO BOUYS	
SATELLITE ACCESS CODE AND NUMBER		EMERGENCY POSITION INDICATING RADIO BEACONS (EPIRB's)	

## Guidance Notes for Completion

**General:**

All information required (where applicable) must be entered correctly and carefully. Failure to do so may cause delays to notification and therefore to the ability to apply for a licence.

Note that no notification or licence application will be accepted for vessels that are not suited for the task of inshore fishing operations in British Indian Ocean Territory waters.

Please also enclose with this application a side view photograph of the whole vessel (colour or black and white, at least (10 X 7cm), and a copy of the International Tonnage Certificate.

**Note No :**

- 1 **Vessel Name :** Enter in English, include any number or letter used to identify particular vessel e.g. Noor Star 2, Reef etc.
- 2 **International Radio Call Sign :** Enter the code of numbers and letters issued by the country of registration according to the rules of the International Telecommunications Union.
- 3 **Country of Registration :** Enter the country where the vessel is officially registered.
- 4 **Country Registration Number :** Enter the number (including letters) issued by the registering country.
- 5 **Port(s) :** Enter the base or home port and the transshipment and unloading ports (if different) usually used following a fishing trip.
- 6 **Legal Personalities :** Enter the names and communication details (as described and where applicable) of the owner, charterer and agent. (Note: Since fishing master may change from trip to trip the details of that person will be required during licence application).



## Vessel Characteristics

- 7 **Gross Registered Tonnage :** The tonnage of the vessel as recorded on the country registration document.
- 8 **Convention Used for Measurement of GRT :** Which convention is used e.g. IMO 1969 etc.
- 9 **Overall Length (Metres) :** The overall length as recorded on the country registration document.
- 10 **Overall Width (Metres) :** The overall length as recorded on the country registration document.
- 11 **Overall Draft (Metres) :** The overall length as recorded on the country registration document.
- 12 **Main Engine (Horse Power) :** The horse power rating of the main engine.
- 13 **Fuel Capacity (Kilolitres) :** Fuel capacity at full.
- 14 **Year of Construction :** Year of Construction.
- 15 **Fish Storage :** In this table enter the freezing method (e.g. Brine, Blast etc); freezing temperature and storage temperature in degrees centigrade (°C); daily freezing capacity in metric tonnes (mT); other storage methods (e.g. ice) and capacity in metric tonnes (mT) and total fish storage capacity in metric tonnes (mT).

## Vessel Operations

- 16 **Number of Catcher Boats (Dories) :** Enter the total number of catcher boats (dories) used in fishing operations.
- 17 **Number of Fishermen :** Enter the number of fishermen engaged in fishing operations.
- 18 **Number of Non-Fishing Crew :** Enter the number of personnel including all officers and deck crew not engaged in fishing operations.
- 19 **Total Number of Crew :** Enter the total number of personnel aboard each vessel.
- 20 **Normal Trip Length (Days) :** Enter the number of days between leaving base/transshipment/or unloading port and returning to port with a full load of fish during the licence period.
- 21 **Fishing Methods Used :** Enter the types of fishing methods used in fishing operations.
- 22 **Vessel Communications :** In this table enter the following details :
  - International Radio Call Sign :** As 2 above.
  - Normal Transmitting Frequencies :** Enter the frequencies / channels that vessel normally uses for communications with base port and national authorities.
  - Satellite Communications Type :** Enter type, make and model of satellite communication equipment e.g. INMARSAT A, INMARSAT C, etc.
  - Access Code and Number :** Enter codes and numbers for access to voice / fax etc.
  - Position Determining Equipment :** Indicate which types of position determining and navigation equipment are used on board the vessel.
  - Radio Buoys :** Enter number and identifying marks of radio buoys used in fishing, if any.
  - Emergency Position Indicating Radio Beacons (EPIRB's) :** Tick if EPIRB's are available.

# BRITISH INDIAN OCEAN TERRITORY



## INSHORE FISHING VESSEL LICENCE

Issued by

**the Director of Fisheries**

on behalf of the

**Commissioner for the British Indian Ocean Territory**

Pursuant to section 4 of the Fisheries (Conservation and Management) Ordinance 1991

I, \_\_\_\_\_ Director of Fisheries, hereby authorise the fishing vessel :  
\_\_\_\_\_ [BIOT Inshore Fishing Notification No: \_\_\_ / INF / \_\_\_ ]

to fish within the Fisheries Conservation and Management Zone of the British Indian  
Ocean Territory under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER: INF \_\_\_\_\_

DATE OF VALIDITY OF THIS LICENCE: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

PERIOD OF VALIDITY OF THIS LICENCE: \_\_\_\_\_

AREA COVERED BY THIS LICENCE : \_\_\_\_\_

\_\_\_\_\_  
DATE \_\_\_ / \_\_\_ / \_\_\_

Director of Fisheries

---

All communications concerning this licence should be addressed to:

The Director of Fisheries  
c/o Marine Resources Assessment Group Limited  
8 Prince's Gardens, LONDON SW7 1NA, UK  
Tel: 44 71 225 3666 Fax: 44 71 823 7916

## TERMS AND CONDITIONS OF LICENSING

- 1 The licence shall comply with the Fisheries (Conservation and Management) Ordinance 1991 and Regulations as amended from time to time.
- 2 This licence is valid for one voyage to the fishing waters of the British Indian Ocean Territory to be completed within a period not exceeding two months from the date of departure of the vessel from port.
- 3 The vessel shall monitor international maritime VHF channels thirteen and/or sixteen whilst in or in the vicinity of the fishing waters of the British Indian Ocean Territory. Other requirements on radio contact may be advised to licensees from time to time.
- 4 The licensee shall not capture or attempt to capture fish by any fishing method other than :
  - A. Hook and line (including handline, trolling, bottom set long line.)
  - B. Handheld cast nets strictly for the purpose of catching bait fish.
- 5 Fishing within lagoons is strictly prohibited.
- 6 Crew members are permitted to land on islands with the exception of Diego Garcia for the collection of water and coconuts only. Crew Members shall not remain overnight on islands and shall not build any structures.
- 7 The Captain of the vessel shall record accurately details of his vessel and its fishing operation in the fishing waters of the British Indian Ocean Territory in the Fishing Logs provided for this purpose.
- 8 A daily record of position, fishing effort and catch by species shall be kept. These catches shall be recorded by both number of individual fish and by the weight of the catch. These data shall be entered on the Fishing Log and shall be made immediately available for inspection by a Fisheries Protection Officer who may in accordance with The Fisheries (Conservation and Management) Ordinance 1991 visit the vessel during its operations in the British Indian Ocean Territory fishing waters.
- 9 The completed Fishing Logs in respect of each voyage shall be delivered to the British High Commissioner, Port Louis, Mauritius, or alternatively to the Director of Fisheries, BIOT, c/o Marine Resources Assessment Group Ltd, 8 Prince's Gardens, London, SW7 1NA, United Kingdom, within one week of the vessel's return after each voyage to the fishing waters of the British Indian Ocean Territory.
- 10 The licensee shall submit a crew list to the British High Commissioner at the time of departure of the vessel if a list did not accompany the licence application.
- 11 Failure to comply with any of the terms and conditions applied to this licence is an offence under the Fisheries (Conservation and management) Ordinance 1991 and may result in the withdrawal of the licence and further restrictions in relation to the issue of licences for future fishing activities in the British Indian Ocean Territory fishing waters.

**ANNEX 57**

Arbitration Commission of the Peace Conference on the Former Yugoslavia ('Badinter Commission'), Opinion No. 3 of 11 January 1992

# **The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples**

## **Appendix: Opinions of the Arbitration Committee**

### **Opinion No. 1**

The President of the Arbitration Committee received the following letter from Lord Carrington, President of the Conference on Yugoslavia, on 20 November 1991:

We find ourselves with a major legal question.

Serbia considers that those Republics which have declared or would declare themselves independent or sovereign have seceded or would secede from the SFRY which would otherwise continue to exist.

Other Republics on the contrary consider that there is no question of secession, but the question is one of a disintegration or breaking-up of the SDRY as the result of the concurring will of a number of Republics. They consider that the six Republics are to be considered equal successors to the SFRY, without any of them or group of them being able to claim to be the continuation thereof.

I should like the Arbitration Committee to consider the matter in order to formulate any opinion or recommendation which it might deem useful.

The Arbitration Committee has been apprised of the memoranda and documents communicated respectively by the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Slovenia, Serbia, and by the President of the collegiate Presidency of the SFRY.

1) The Committee considers:

a) that the answer to the question should be based on the principles of public international law which serve to define the conditions on which an entity constitutes a state; that in this respect, the existence or disappearance of the state is a question of fact; that the effects of recognition by other states are purely declaratory;

b) that the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty;

c) that, for the purpose of applying these criteria, the form of internal political organization and the constitutional provisions are mere facts, although it is necessary to take them into consideration in order to determine the Government's way over the population and the territory;

d) that in the case of a federal-type state, which embraces communities that possess a degree of autonomy and, moreover, participate in the exercise of political power within the framework of institutions common to the Federation, the existence of the state implies that the federal organs represent the components of the Federation and wield effective power;

e) that, in compliance with the accepted definition in international law, the expression 'state succession' means the replacement of one state by another in the responsibility for the international relations of territory. This occurs whenever there is a change in the territory of the state. The phenomenon of state succession is governed by the principles of international law, from which the Vienna Conventions of 23 August 1978 and 8 April 1983 have drawn inspiration. In compliance with these principles, the outcome of succession should be equitable, the states concerned being free of terms of settlement and conditions by agreement. Moreover, the peremptory norms of general international law and, in particular, respect for the fundamental rights of the individual and the rights of peoples and minorities, are binding on all the parties to the succession.

2) The Arbitration Committee notes that:

a) - although the SFRY has until now retained its international personality, notably inside international organizations, the Republics have expressed their desire for independence;

- in Slovenia, by a referendum in December 1990, followed by a declaration of independence on 25 June 1991, which was suspended for three months and confirmed on 8 October 1991;

- in Croatia, by a referendum held in May 1991, followed by a declaration of independence on 25 June 1991, which was suspended for three months and confirmed on 8 October 1991;

- in Macedonia, by a referendum held in September 1991 in favour of a sovereign and independent Macedonia within an association of Yugoslav states;

- in Bosnia and Herzegovina, by a sovereignty resolution adopted by Parliament on 14 October 1991, whose validity has been contested by the Serbian community of the Republic of Bosnia and Herzegovina.

b) - The composition and workings of the essential organs of the Federation, be they the Federal Presidency, the Federal Council, the Council of the Republics and the Provinces, the Federal Executive Council, the Constitutional Court or the Federal Army, no longer meet the criteria of participation and representatives inherent in a federal state;

c) - The recourse to force has led to armed conflict between the different elements of the Federation which has caused the death of thousands of people and wrought considerable destruction within a few months. The authorities of the Federation and the Republics have shown themselves to be powerless to enforce respect for the succeeding ceasefire agreements concluded under the auspices of the European Communities or the United Nations Organization.

3) - Consequently, the Arbitration Committee is of the opinion:

- that the Socialist Federal Republic of Yugoslavia is in the process of dissolution;

- that it is incumbent upon the Republics to settle such problems of state succession as may arise from this process in keeping with the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities;
- that it is up to those Republics that so wish, to work together to form a new association endowed with the democratic institutions of their choice.

## **Opinion No. 2**

On 20 November 1991 the Chairman of the Arbitration Committee received a letter from Lord Carrington, Chairman of the Conference on Yugoslavia, requesting the Committee's opinion on the following question put by the Republic of Serbia:

Does the Serbian population in Croatia and Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?

The Committee took note of the *aide-mémoires*, observations and other materials submitted by the Republics of Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Slovenia and Serbia, by the Presidency of the Socialist Federal Republic of Yugoslavia (SFRY) and by the 'Assembly of the Serbian People of Bosnia-Herzegovina'.

1. The Committee considers that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise.
2. Where there are one or more groups within a state constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law.

As the Committee emphasized in its Opinion No. 1 of 29 November 1991, published on 7 December, the - now peremptory - norms of international law require states to ensure respect for the rights of minorities. This requirement applies to all the Republics *vis-à-vis* the minorities on their territory.

The Serbian population in Bosnia-Herzegovina and Croatia must therefore be afforded every right accorded to minorities under international convention as well as national and international guarantees consistent with the principles of international law and the provisions of Chapter II of the draft Convention of 4 November 1991, which has been accepted by these Republics.

3. Article 1 of the two 1986 International Covenants on human rights establishes that the principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.

In the Committee's view one possible consequence of this principle might be for the members of the Serbian population in Bosnia-Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the states concerned.

4. The Arbitration Committee is therefore of the opinion:

(i) that the Serbian population in Bosnia-Herzegovina and Croatia is entitled to all the rights concerned to minorities and ethnic groups under international law and under the provisions of the draft Convention of the Conference on Yugoslavia of 4 November 1991, to which the Republics of Bosnia-Herzegovina and Croatia have undertaken to give effect; and

(ii) that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality.

### **Opinion No. 3**

On 20 November 1991 the Chairman of the Arbitration Committee received a letter from Lord Carrington, Chairman of the Conference on Yugoslavia, requesting the Committee's opinion on the following question put by the Republic of Serbia:

Can the internal boundaries between Croatia and Serbia and between Bosnia-Herzegovina and Serbia be regarded as frontiers in terms of public international law?

The Committee took note of the *aide-mémoires*, observations and other materials submitted by the Republics of Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Slovenia and Serbia, by the Presidency of the Socialist Federal Republic of Yugoslavia (SFRY) and by the 'Assembly of the Serbian People of Bosnia-Herzegovina'.

1. In its Opinion No. 1 of 29 November, published on 7 December, the Committee found that 'the Socialist Federal Republic of Yugoslavia is in the process of breaking up'. Bearing in mind that the Republics of Croatia and Bosnia-Herzegovina, *inter alia*, have sought international recognition as independent states, the Committee is mindful of the fact that its answer to the question before it will necessarily be given in the context of a fluid and changing situation and must therefore be founded on the principles and rules of public international law.

2. The Committee therefore takes the view that once the process in the SFRY leads to the creation of one or more independent states, the issue of frontiers, in particular those of the Republics referred to in the question before it, must be resolved in accordance with the following principles:

*First* - All external frontiers must be respected in line with the principles stated in the United Nations Charter, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)) and in the Helsinki Final Act, a principle which also underlies Article 11 of the Vienna Convention of 23 August 1978 on the Succession of States in Respect of Treaties.

*Second* - The boundaries between Croatia and Serbia, between Bosnia-Herzegovina and Serbia, and possibly other adjacent independent states may not be altered except by agreement freely arrived at.



*Third* - Except where otherwise agreed, the former boundaries become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial *status quo* and, in particular, from the principle of *uti possidetis*. *Uti possidetis*, though initially applied in settling decolonisation issues in America and Africa, is today recognized as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Faso and Mali (*Frontier Dispute*, (1986) Law Reports 554 at 565):

Nevertheless the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles...

The principle applies all the more readily to the Republic since the second and fourth paragraphs of Article 5 of the Constitution of the SFRY stipulated that the Republics' territories and boundaries could not be altered without their consent.

*Fourth* - According to a well-established principle of international law the alteration of existing frontiers or boundaries by force is not capable of producing any legal effect. This principle is to be found, for instance, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)) and in the Helsinki Final Act; it was cited by the Hague Conference on 7 September 1991 and is enshrined in the draft Convention of 4 November 1991 drawn up by the Conference on Yugoslavia.

## **ANNEX 58**

Fisheries Regulations 1993 (S.I. No 3 of 1993)

**THE BRITISH INDIAN OCEAN TERRITORY**

**The Fisheries (Conservation and Management) Ordinance 1991**

**The Fishing Regulations 1993**

**IN EXERCISE** of the powers conferred on me by section 21 of the Fisheries (Conservation and Management) Ordinance 1991 as amended by the Fisheries (Conservation and Management) (Amendment) (No. 2) Ordinance 1993, I hereby make the following Regulations:

**PART 1**

**INTRODUCTORY**

Citation and commencement.

1. – (1) These Regulations may be cited as the Fishing Regulations 1993.

(2) These Regulations shall come into force on 1 January 1994 and shall thereafter be deemed to have come into force immediately after the commencement of the Ordinance, that is to say, on 1 October 1991.

(3) Without prejudice to section 6(5) of the Interpretation and General Provisions Ordinance 1993, no person shall be guilty of an offence under these Regulations or be liable to any penalty thereunder by reason of anything done or omitted before 1 January 1994.

Interpretation.

2. – (1) In these Regulations, unless the contrary intention appears –

"agent", in relation to the owner or charterer of a licensed fishing boat or a licensed transshipment boat, means the person for the time being engaged as his agent in pursuance of regulation 5;

"the Convention of 1969" means the International Convention on Tonnage Measurement of Ships, 1969;

"the Director" means the Director of Fisheries;

"fee", in relation to a fishing licence or a transshipment licence, means the fee therefor that is prescribed by Regulations made under the Ordinance or, if there are no such Regulations prescribing that fee or subject to any such Regulations, the fee therefor that is determined by the Director;

"fishing boat notification application" means an application for a fishing boat notification number made in accordance with regulation 4(2);

"fishing licence application" means an application for a fishing licence made in accordance with regulation 4(1);

"the International Tonnage Rules" means the Regulations for Determining Gross and Net Tonnages of Ships annexed to the Convention of 1969;

"Khz" means kilohertz, that is to say, one thousand cycles per second;

"licence" means a fishing licence or, as the case may require, a transshipment licence;

"licensed fishing boat" means a fishing boat which is specified in a fishing licence;

"licensed transshipment boat" means a fishing boat which is specified in a transshipment licence (whether or not it is also a licensed fishing boat);

"licensee" means a person granted a fishing licence or, as the case may require, a transshipment licence;

"to lodge", in relation to an application to the Director made under these Regulations, means to cause that application to be actually delivered to the Director at the address specified in regulation 4(3) and in a manner approved by him;

"mhz" means megahertz, that is to say, one million cycles per second;

"the Ordinance" means the Fisheries (Conservation and Management) Ordinance 1991;

"patrol vessel" means a vessel for the time being engaged in the surveillance and policing of the fishing waters for the Government of the Territory;

"period of validity", in relation to a licence, means the period specified in the licence as the period during which the activity authorised by the licence may lawfully be carried out;

"surveillance aircraft" means an aircraft for the time being engaged in the surveillance of the fishing waters for the Government of the Territory; and

"VHF" means very high frequency, that is to say, a single radio frequency or band lying between 300 mhz and 30 mhz.

(2) Where these Regulations require any form or other document or thing or any procedure or other matter to be as approved by the Director, it shall be deemed to be as so approved if it conforms with what is for the time being specified or otherwise indicated in that behalf in or under the relevant Administration Documentation and Guidance or other similar document (by whatever name called) issued by or on behalf of the Director for the purposes of the administration of the Fisheries Management and Conservation Zone (including any guidance issued under regulation 36.)

(3) Where, under these Regulations, any communication or requirement relating to the operation, navigation or other handling of a fishing boat falls to be made by the Director to the master of the boat or by the master to the Director, it may be made by or to any Fisheries Protection Officer on behalf of the Director.

(4) In these Regulations, or in any licence or in other documents issued in pursuance of these Regulations, "prescribed" means prescribed by or under these Regulations and includes specified or otherwise indicated as referred to in paragraph (2) or otherwise specified or indicated by the Director.

## PART II

### FISHING LICENCES AND LICENSED FISHING BOATS

Application of this Part.

3. This Part applies to applications for fishing licences, to the grant, content and incidents of such licences, to operations undertaken under such licences and to the obligations of persons in relation to licensed fishing boats.

Applications for fishing licences and fishing boat notification numbers.

4. – (1) Subject to the following provisions of this regulation, every application for a fishing licence shall be made in a form approved by the Director and shall be lodged with the Director, in a manner approved by him, not less than 7 days before the date specified in the application as the date on which the licence is required.

(2) Subject to the following provisions of this regulation, before a fishing licence application is lodged with the Director in respect of any fishing boat, there shall have been lodged with him, not less than 7 days previously and in a manner and form approved by him, an application for a fishing boat notification number specific to that boat; and that number, when notified to the applicant by the Director, shall thereafter be cited in all communications with the Director relating to that boat, including any fishing licence application in respect thereof.

(3) Fishing licence applications and fishing boat notification applications shall be lodged with the Director at the following address:-

"The Director of Fisheries,  
British Indian Ocean Territory,  
c/o Marine Resources Assessment Group Limited,  
8 Prince's Gardens,  
LONDON, SW7 1NA,  
ENGLAND."

(4) The Director may, in his discretion, accept a fishing licence application or a fishing boat notification application that has been lodged with him after the time specified therefor in paragraph (1) or, as the case may be, paragraph (2).

(5) Subject to paragraph (6), each fishing boat notification application shall be accompanied by the International Tonnage Certificate (1969), issued pursuant to the Convention of 1969, relating to the fishing boat in respect of which the application is made.

(6) If any fishing boat in respect of which a fishing boat notification application is made is not registered in a country whose Government is a Party to the Convention of 1969, the Director may, in his discretion, accept such evidence as he thinks fit of the dimensions and other relevant features of that boat and, using such method of calculation as he thinks fit, calculate therefrom the gross tonnage of that boat; and the tonnage so calculated shall be deemed to be the gross tonnage for the purposes of determining any fee payable for a licence in respect of that boat.

(7) Notwithstanding that the Director has issued a fishing boat notification number in respect of a fishing boat, he may, then or at any time thereafter, require, as a condition of his granting a fishing licence in respect of that boat, that the fishing licence application -

- (a) be lodged with him by a date specified by him; and
- (b) subject to paragraph (8), be accompanied by the deposit of such sum as he may specify.

(8) The sum that is payable by way of deposit under paragraph (7) shall be paid in such manner as the Director may direct, but the Director may instead accept security for such payment either in the form of irrevocable letters of credit or in any other form satisfactory to him.

(9) The sum that has been paid by way of deposit under paragraph (7) shall be refunded to the applicant (or the security that has been given therefor shall be returned or cancelled, as the case may require) if no licence is granted; but if a licence is granted, that sum (or the sum so secured) shall be applied towards the payment of the fee for the licence.

Agents.

5. - (1) The owner or the charterer, as the case may be, of a fishing boat shall, before a fishing boat notification application is lodged in respect of that boat, engage a person as his agent in respect of that boat for the purposes of these Regulations and that person shall be so designated to the Director in the application.

(2) The owner or the charterer of a fishing boat who has, in accordance with this regulation, engaged a person, and designated him to

the Director, as his agent in respect of that boat may, at any time thereafter, engage, and designate to the Director, another person as his agent in respect of that boat for the purposes of these Regulations and, if the Director approves that designation, that other person shall, for all such purposes, replace the person previously so designated.

(3) A person who is for the time being designated under paragraph (1) or, with the approval of the Director, under paragraph (2) as the agent of the owner or charterer in respect of a fishing boat shall be deemed for the purposes of these Regulations to have the full and irrevocable authority of his principal in connection with any fishing operations of that boat or any related activity (including any proposed such operations or activity), and such authority shall include, without prejudice to the generality of the foregoing, authority (for the purposes aforesaid) to incur financial or other legal liability on behalf of his principal in connection with any such operations or activity and authority (for the purposes aforesaid) to receive service on behalf of his principal of any notice, summons or other document issued in or for the purposes of any legal proceedings arising out of or otherwise connected with any such operations or activity.

(4) The designation of a person as the agent of the owner or charterer of a fishing boat shall not be effective for the purposes of this regulation unless that person resides or has his place of business in a country approved in that behalf by the Director.

(5) The designation of a person under this regulation as the agent of the owner or charterer of a fishing boat shall be made to the Director in such manner and with such details as may be approved by the Director or otherwise be directed by him.

Bond or security. 6. The licensee or the agent of the licensee shall, if so required by the Director before or after the grant of a fishing licence, either—

(a) execute and maintain a bond, in an amount and form satisfactory to the Director, to guarantee compliance with the Ordinance, with these and any other Regulations made thereunder and with any conditions to which the licence is subject; or

(b) provide such other financial or other security for that purpose as the Director may approve.

Fishing licences. 7. — (1) A fishing licence may be granted in respect of only one fishing boat, which shall be specified in it, and shall not be transferable.

(2) Every fishing licence shall bear its own serial number allocated by the Director, and the master of a licensed fishing boat shall, on demand by any Fisheries Protection Officer, inform him of the number of the licence granted in respect of that boat.

(3) The Director may, before granting a fishing licence in respect of a fishing boat —

- (a) require that there shall be produced to him the ship's papers of the boat and such drawings and diagrams relating to its construction as he may specify;
- (b) require the master to permit a Fisheries Protection Officer to inspect the boat and to take measurements and photographs of it and of any equipment or apparatus carried on board it.

(4) A fishing licence shall be granted for such fixed period or fixed periods as the Director may decide.

(5) A fishing licence, when granted, shall be issued to the master of the fishing boat specified in it in London or, at the request of the applicant, in such other place as the Director may agree.

(6) Every fishing licence shall contain, or have endorsed on or annexed to it, or refer to, the conditions subject to which it is granted.

(7) Without prejudice to regulations 5(2) and 5(5), if, at any time when a fishing licence is in force, a change takes place in any circumstance or respect which was required, by or under these Regulations, to be notified to the Director in or together with the application for that licence, that change shall, within 30 days of the day on which it took place (or such longer period as the Director may in any particular case allow), be notified to the Director by the owner or charterer of the boat, or by his agent, in a manner and form approved by the Director.

Compulsory radio equipment.

8. Every licensed fishing boat engaged in fishing in the fishing waters shall be equipped with radio equipment capable of providing radio telephony (voice) communications using maritime frequencies in the High Frequency and VHF bands.

International Code of Signals and flags to be carried and Code to be used.

9. – (1) Every licensed fishing boat, at all times when it is within the fishing waters, shall carry a copy of the International Code of Signals published by the International Maritime Organisation and an appropriate set of flags and shall at all such times carry persons competent to exchange messages by means thereof with a Fisheries Protection Officer embarked in any vessel or aircraft.

(2) In every communication by radio, flag or light between any licensed fishing boat in the fishing waters and a Fisheries Protection Officer, the signals specified in the International Code of Signals shall be used.

Navigational charts and aids to be carried.

10. Every licensed fishing boat, at all times when it is within the fishing waters, shall carry appropriate navigational charts and publications and be fitted with such electronic navigational aids as will enable the master accurately to ascertain its position in the fishing waters.

Information on entry into and departure from fishing waters.

11. – (1) The master of a licensed fishing boat who intends his boat to enter the fishing waters shall, not more than 48 hours or less than 12 hours before the entry of the boat into the fishing waters, inform the Director of his intention.



(2) The master of a licensed fishing boat who intends his boat to leave the fishing waters shall, before the boat leaves the fishing waters and in sufficient time for the carrying out, if the Director so requires, of the procedures provided for by regulation 12, inform the Director of his intention.

(3) The information required by this regulation to be given to the Director shall be so given in such form and manner as is approved by him or as he may from time to time specifically prescribe or direct.

Post-fishing  
inspection and  
delivery of log.

12. - (1) The master of a licensed fishing boat whose boat is about to leave the fishing waters shall, if so required by the Director, bring the boat to such place within the Territory as the Director may designate for the purpose of its being inspected by a Fisheries Protection Officer or other person authorised in that behalf by the Director.

(2) The master of a licensed fishing boat whose boat is about to leave the fishing waters shall, if so required by the Director, deliver to the Director, before leaving the fishing waters, the fishing log referred to in regulation 13(2).

Log books.

13. - (1) The master of every licensed fishing boat engaged in fishing in the fishing waters shall keep a radio log in a form approved by the Director.

(2) The master of every licensed fishing boat engaged in fishing in the fishing waters shall keep a fishing log in a form approved by the Director.

(3) The radio log and the fishing log shall, on demand by a Fisheries Protection Officer, be produced to him for inspection and copies thereof or copy extracts therefrom shall also, on demand, be given to him, without payment.

If radio is  
unusable.

14. If the main radio equipment of a licensed fishing boat becomes unusable while the boat is within the fishing waters, the master shall make adequate arrangements for all information which he is required, by or under these Regulations, to furnish to the Director to be relayed to the Director through another vessel.

Display of radio  
call signs.

15. - (1) The International Radio Call Sign of each licensed fishing boat within the fishing waters shall be prominently displayed on that boat in accordance with international standards as set out in the publication of the Food and Agriculture Organisation entitled "The Standard Specifications for the Marking and Identification of Fishing Vessels."

(2) The letters and numbers of the Call Sign shall be painted in black on a white background or in white on a black background and the paintwork where they are painted shall be maintained in good condition so that they are clearly visible at all times.

English-speaking  
crew-member.

16. The master of each licensed fishing boat shall ensure that, while it is within the fishing waters, there shall be at least one member of its crew who is able to speak English, and understand spoken English, with reasonable fluency.

Radio listening  
watches.

17. The master of each licensed fishing boat shall cause a continuous listening watch to be maintained on VHF marine band Channel 16 and 2182 Khz while the boat is within the fishing waters, but these frequencies shall be used as calling and distress frequencies only and shall not be used for inter-ship communications.

### PART III

#### TRANSHIPMENT LICENCES AND TRANSHIPMENT OF FISH

Application of  
this Part.

18. This Part applies to applications for transhipment licences, to the grant, content and incidents of such licences, to operations undertaken under such licences and to the obligation of persons in relation to licensed transhipment boats.

Each fishing boat  
taking part in  
transhipment to  
be licensed.

19. - (1) No transhipment of fish shall take place within the fishing waters unless a transhipment licence is in force with respect to each fishing boat taking part in the transhipment, that is to say, the fishing boat from which the fish is passed, the fishing boat which receives the fish and any fishing boat which transports from the territorial sea or internal waters of the Territory any fish previously transhipped.

(2) If (but only if) it purports to do so, a fishing licence may also operate as a transhipment licence and may accordingly include, in addition to conditions or other provisions relating to fishing by the fishing boat specified in it, such conditions or other provisions relating to the transhipment of fish by that boat as are authorised under section 7 of the Ordinance.

Applications for  
transhipment  
licences.

20. - (1) An application for a transhipment licence may be made by the owner or charterer of the fishing boat in respect of which the licence is required or by the master of that boat on behalf of the owner or charterer.

(2) An application for a transhipment licence shall be made in a form approved by the Director or as otherwise directed by him and shall be lodged with the Director, not less than 72 hours before the date specified in the application as the date on which the licence is required, in a manner approved by him or as otherwise directed by him:

Provided that, unless and until the Director directs otherwise, the lodging of an application may be effected by causing it to be actually delivered to him, at the address specified in paragraph (3), by post, telex, telegram or facsimile transmission.

(3) Applications for transhipment licences shall be lodged with the Director at the following address:

"The Director of Fisheries,  
British Indian Ocean Territory,  
c/o Marine Resources Assessment Group Limited,  
8, Prince's Gardens,  
LONDON, SW7 INA,  
ENGLAND."

(4) The Director may, in his discretion, accept an application for a transshipment licence that has been lodged with him after the time specified therefor in paragraph (2).

(5) Without prejudice to the foregoing provisions of this regulation, where the fishing boat in respect of which a transshipment licence is applied for does not already have a fishing boat notification number, the provisions of regulations 4, 5 and 6 (relating to applications for and the grant of such numbers, to the appointment of agents and to the execution and maintenance of bonds or the provision of other security) have effect in relation to the application for and the grant of the transshipment licence as they have effect in relation to an application for and the grant of a fishing licence.

Transshipment  
licences.

21. - (1) A transshipment licence shall be valid only-

- (a) in respect of the fishing boat specified in the licence;
- (b) for a fixed period or for fixed periods, as specified in the licence;
- (c) for a fixed number or a fixed quantity, or for both a fixed number and a fixed quantity, of transshipments of fish, as specified in the licence; and
- (d) for a fixed place or for fixed places of transshipment, as specified in the licence.

(2) A transshipment licence, when granted, shall be issued to the master of the fishing boat specified in it in London or, at the request of the applicant, in such other place as the Director may agree.

(3) Every transshipment licence shall contain, or have endorsed on or annexed to it, or refer to, the conditions subject to which it is granted.

(4) Every separate transshipment licence ( that is to say, a transshipment licence other than a fishing licence which also operates as a transshipment licence by virtue of regulation 19(2)) shall bear its own serial number allocated by the Director, and the master of a licensed transshipment boat shall, on demand by any Fisheries Protection Officer, inform him of the number of the licence (whether a fishing licence or a separate transshipment licence) granted in respect of that boat.

(5) Without prejudice to regulations 5(2) and 5(5), if, at any time when a transshipment licence is in force, a change takes place in any circumstance or respect which was required, by or under these Regulations, to be notified to the Director in or together with the application for that licence, that change shall, within 30 days of the day on which it took place

(or such longer period as the Director may in any particular case allow), be notified to the Director by the owner or charterer of the boat, or by his agent, in a manner and form approved by the Director.

**Fees.** 22. Where a fee is payable for a transshipment licence, the Director may, as a condition of his granting the licence, require-

- (a) that the fee is first paid in full; or
- (b) that payment thereof is first secured by irrevocable letters of credit or by other means satisfactory to him.

**Application of certain regulations in Part II.** 23. Without prejudice to regulation 24, regulations 8, 9, 10, 13, 14, 15, 16 and 17 apply to all licensed transshipment boats as they apply to licensed fishing boats.

#### **PART IV**

#### **PROVISIONS APPLYING TO ALL FISHING BOATS**

**Application of this Part.** 24. This Part applies to the operations of all fishing boats within the fishing waters and to the obligations of persons in relation to all such boats within those waters.

**Compliance with instructions from patrol vessels.** 25. - (1) The master of a fishing boat within the fishing waters shall comply with any instruction, order or requirement given from a patrol vessel by or at the direction of a Fisheries Protection Officer.

(2) The instruction that a fishing boat in the fishing waters should stop for boarding and inspection by a Fisheries Protection Officer will be conveyed by VHF radio marine band on the ship-to-ship calling channel (Channel 16) or by the international code signal "SIERRA QUEBEC 3" or by flashing, by a signal lamp from a patrol vessel, the morse code symbol "LIMA" (that is to say, "You should stop your vessel instantly"); but if contact cannot be made by any of these means, the patrol vessel will direct a series of flashing white lights towards the fishing boat and this shall be interpreted as an instruction to the master of the fishing boat that it must forthwith desist from any previous manoeuvre, course or action and follow that patrol vessel.

**Compliance with instructions from surveillance aircraft.** 26. - (1) The master of a fishing boat within the fishing waters shall comply with any instruction, order or requirement given from any surveillance aircraft by or at the direction of a Fisheries Protection Officer.

(2) A Fisheries Protection Officer on board a surveillance aircraft who wishes to communicate on Channel 16 of VHF radio marine band with a fishing boat in the fishing waters will cause the aircraft to signal the morse code symbol "KILOG" with a yellow light or to signal by switching its navigation and landing lights on and off.

(3) If the fishing boat does not make radio contact with the aircraft in response to a signal given in accordance with paragraph (2), the Fisheries Protection Officer will cause the aircraft to waggle its wings from side to side and then to settle on a steady course; and this shall be interpreted as an instruction to the master of the fishing boat that it must forthwith desist from any previous manoeuvre, course or action and immediately proceed in the direction indicated by the aircraft (that is to say, following the course adopted by the aircraft after waggling its wings) and that he must at the same time attempt to make radio contact with a Fisheries Patrol Vessel or the fisheries authorities in the Territory (call sign CHAGOS FISHERIES 5144 mhz).

Accommodation and facilities for observers and Fisheries Protection Officers.

27 – (1) The master of a licensed fishing boat shall, when requested to do so by the Director, permit one or more official observers (being persons designated as such by the Director in writing) to board the boat and remain on board it, while it is within the fishing waters, for all or any of the following purposes, that is to say:-

- (a) recording scientific data and observations;
- (b) inspecting the boat's radio log and fishing log; and
- (c) taking samples;

and he shall permit any such observer to retain and remove from the boat any records, notes and samples taken by him.

(2) Where an official observer is on board a licensed fishing boat for a period of more than four hours, the master shall provide him with food and accommodation of the same standard as is provided to officers on board the boat.

(3) The master of a licensed fishing boat shall also provide the facilities referred to in paragraph (2) to any Fisheries Protection Officer who is compelled for any reason to remain on board the boat for a period of more than four hours.

(4) The master of a licensed fishing boat shall, at the request of a Fisheries Protection Officer or official observer who is on board the boat in pursuance of this regulation-

- (a) arrange for him to be able send or receive messages by means of radiotelegraph or radiotelephone facilities on board the boat; and
- (b) provide all reasonable assistance within his power to enable him to carry out his duties and functions.

Action on receiving instruction to stop for inspection.

28. – (1) The master of a fishing boat which receives an instruction, in accordance with regulation 25(2), to stop for boarding and inspection shall cause the boat, so far as is consistent with the safety of navigation, to heave to and take all way off and shall, if instructed to permit a Fisheries Protection Officer to board, take such steps as, in accordance with good seamanship, are requisite or most convenient to facilitate such boarding.

Powers in relation to stopped fishing boats.

(2) A fishing boat which has hove to and taken way off in accordance with paragraph (1) shall not, without the permission of a Fisheries Protection Officer, again put on way.

29. – (1) On instructing a fishing boat to stop in accordance with regulation 25(2), a Fisheries Protection Officer may also require the master–

- (a) to haul in his nets or discontinue the use of fishing gear;
- (b) to take such steps as the Fisheries Protection Officer may specify to desist from taking or catching fish;
- (c) to stow his fishing gear.

(2) Having boarded a fishing boat which has stopped pursuant to an instruction given in accordance with regulation 25(2), a Fisheries Protection Officer may–

- (a) require the master–
  - (i) to cause radio communication to be maintained with a patrol vessel on such frequency or channel as he may direct;
  - (ii) to permit him to speak, by means of the boat's radio equipment, with a patrol vessel or with the Director or any other person;
  - (iii) in the case of a licensed fishing boat or a licensed transshipment boat, to produce any document or thing required to be carried on such a boat;
  - (iv) to produce the boat's navigation log, radio log and fishing log, any charts carried on the boat and any documents relating to its registration and tonnage;
- (b) inspect and take copies, or require the master to furnish him with copies, of any documents produced to him pursuant to a requirement imposed under subparagraph (a);
- (c) search and inspect and take photographs of the boat, any fish on board it and any fishing gear, apparatus or equipment on board it;
- (d) impose any such requirement as, in the circumstances referred to in paragraph (1), might be imposed under that paragraph.

(3) The master of a fishing boat which has stopped pursuant to the instructions of a Fisheries Protection Officer–

- (a) shall comply with any requirement imposed on him by a Fisheries Protection Officer under paragraph (1) or paragraph (2);

- (b) shall furnish every assistance requisite to enable a Fisheries Protection Officer to do anything which he is authorised to do under paragraph (2);
- (c) shall not obstruct or hinder a Fisheries Protection Officer, or cause or permit him to be obstructed or hindered, in the performance of his duties.

Power to direct fishing boat to proceed to place within Territory.

30. – (1) If a Fisheries Protection Officer-
- (a) has reason to believe that an offence under the Ordinance, or under these or any other Regulations made under the Ordinance, has been committed in relation to a fishing boat; or
  - (b) considers it necessary or expedient so to do for the better carrying out of any search, examination or enquiry in relation to a fishing boat;

he may, whether or not he is then on board the boat, direct the master to bring or take it to such place within the Territory as he appoints.

(2) A direction under paragraph (1) may be modified or withdrawn by a Fisheries Protection Officer.

(3) The master of a fishing boat to whom a direction has been given under paragraph (1) shall comply with it or cause it to be complied with and shall cause the crew of the boat to take all steps necessary for that purpose.

Fishing boat brought to Territory under regulation 30 to remain moored as directed.

31. – (1) The master of a fishing boat that has been brought or taken to a place within the Territory under regulation 30 shall ensure that the provisions of this regulation are complied with.

(2) On arrival at the appointed place within the Territory and at all times thereafter, the boat shall moor, anchor or make fast in such manner and in such anchorage, berth or other position as a Fisheries Protection Officer from time to time directs.

(3) After mooring, anchoring or making fast in accordance with paragraph (2), the boat may not be unmoored or up-anchor, nor may it slip its moorings or anchor or otherwise move from its mooring, berth or position, without the prior consent of a Fisheries Protection Officer.

(4) Paragraph (3) shall not prevent a fishing boat from being moved, without the prior consent of a Fisheries Protection Officer, within the confines of the port or harbour in which it is for the time being directed to moor, anchor or make fast to the extent that such movement is necessary, in accordance with the dictates of good seamanship, by reason of some emergency of tide, wind or water or other like emergency and to the extent that, in those circumstances, the boat or the safety of its crew would be hazarded by the delay attendant on obtaining such prior consent.

(5) Nothing in this regulation shall be construed as authorising any person on or connected with a fishing boat which is moored, anchored or made fast at any place within the Territory to land in the Territory, or in

any other way to enter the Territory, unless he is in possession of a permit, or his name is endorsed on a permit, issued under the Immigration Ordinance 1971.

Saving for powers conferred by section 10 of Ordinance.

32. The powers conferred on a Fisheries Protection Officer by regulations 29 to 31 are without prejudice to the powers vested in him by section 10 of the Ordinance.

## PART V

### ADMINISTRATIVE AND GENERAL

Records, etc. to be in English.

33. All records (including logs), reports and notifications required to be made or maintained by or under these Regulations shall be made or maintained in English.

Maintenance of records by Director.

34. — (1) The Director shall make and maintain records of the following matters:-

- (a) all licences granted;
- (b) the date on which each licence was granted;
- (c) the name and address of each licensee;
- (d) the conditions, if any, subject to which each licence was granted;
- (e) the name of the fishing boat in respect of which each licence was granted and its country of registry, port of registry, registration number, fishing boat notification number and International Radio Call Sign;
- (f) the type of licence granted in each case;
- (g) in each case where the licence is a fishing licence--
  - (i) any limitation (in terms of species) on the fish that may be caught or taken;
  - (ii) any limitation (in terms of quantity or size) on the amount of fish, or fish of any species, that may be caught or taken;
  - (iii) if the licence is limited to fishing in a part or parts of the fishing waters, a sufficient description of that part or those parts, which description shall be by reference to



longitudinal and latitudinal co-ordinates except where the licence is limited to fishing in the internal waters of the Territory in which case the description may be by reference to a chart or map;

- (iv) the period or periods of validity of the licence;
- (h) in each case where the licence is a transshipment licence (whether or not it is also a fishing licence)-
  - (i) the period or periods of validity of the licence to tranship;
  - (ii) the number or quantity, or (as the case may be) the number and quantity, of transshipments of fish specified in the licence;
  - (iii) the place or places of transshipment specified in the licence;
  - (iv) whether the transshipment that is licensed is the transshipment of fish caught or taken in the fishing waters or is the transshipment of fish caught or taken elsewhere or is the transshipment of fish wherever caught or taken;
- (i) all notifications and communications of any kind made to the Director by or on behalf of any person pursuant to the Ordinance, these Regulations or the conditions of any licence;
- (j) if any licence has been varied, the details of the variation, the date when it was made and the date when it was to take effect;
- (k) if any licence has been revoked, suspended or surrendered, the date when the revocation, suspension or surrender was made and the date when it was to take effect;
- (1) all fines or other penalties imposed on any person by any court or by way of administrative penalty for an offence under the Ordinance or under these or any other Regulations made thereunder;
- (m) all deposits and fees paid or owing by any applicant for a licence or any licensee pursuant to the Ordinance or to these or any other Regulations made thereunder or, where any such fees have not been paid in full, any security that has been given or any arrangements that have been made for the payment of those fees.

(2) The records required by paragraph (1) shall be made and maintained in such manner as the Director may determine and may be so made or maintained wholly or partly on a computer.

Identity documents.

35. – (1) The Director shall issue to each Fisheries protection Officer an identification document which shall-

- (a) bear the name and a photograph of the person to whom it is issued;
- (b) state that that person is a Fisheries Protection Officer; and
- (c) state its date of issue and period of validity.

(2) Every Fisheries Protection Officer shall produce his identification document whenever any person reasonably requests him to do so in relation to his performance of any of the functions of a Fisheries Protection Officer.

(3) Paragraphs (1) and (2) do not apply to a person who is a Fisheries Protection Officer by virtue of being any of the following, that is to say, a Peace Officer or an Imports and Exports Control Officer or a commissioned officer of any of Her Majesty's ships or the person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Notes of Guidance.

36. – (1) The Director may from time to time issue to masters of fishing boats and other persons such written guidance or advice as he thinks fit relating to the observance, implementation and administration of the Ordinance and of these and other Regulations made thereunder or generally for the purposes of the administration of the Fisheries Management and Conservation Zone.

(2) Non-compliance with any such written guidance or advice shall not in itself constitute an offence (unless made an offence by, or by virtue of, some other provision of these Regulations) but the guidance or advice shall be admissible in evidence in any proceedings before a court and, if it appears to the court to be relevant to any question arising in those proceedings, shall be taken into account in determining that question.

Patrol vessels to be marked.

37. – (1) Every patrol vessel for the time being operating as such outside the territorial sea or internal waters of the Territory shall be clearly marked on its sides and front with the words "FISHERIES PATROL" in capital letters in a colour contrasting with the colour of the background on which the words appear.

(2) Every patrol vessel for the time being operating as such within the territorial sea or internal waters of the Territory shall either be marked as specified in paragraph (1) or be clearly marked on its sides and front with the words "HARBOUR PATROL" in capital letters in a colour contrasting with the colour of the background on which the words appear.

(3) This regulation does not apply to Her Majesty's ships.

Offences and penalties.

38. – (1) Any person who contravenes any provision of Parts I to IV or regulation 33 or any of the terms and conditions of a licence commits an offence under these Regulations.  
PENALTY - £100,000

(2) Any person who, without reasonable cause (the onus of proof whereof shall lie on him), refuses or fails to provide to the Director or any other Fisheries Protection Officer any information which he is required, by

or under these Regulations, to provide or who, in purported pursuance of these Regulations, provides to the Director or any other Fisheries Protection Officer any information -

- (a) which he knows to be false in any material particular; or
- (b) which, in any such particular, he does not believe to be true; or
- (c) which he knows to be misleading in any such particular

commits an offence under these Regulations.  
PENALTY - £100,000

(3) Paragraphs (1) and (2) are without prejudice to any other law for the time being in force in the Territory (including the Ordinance) by virtue of which any such conduct as is mentioned in either of those paragraphs constitutes an offence or which prescribes the penalty for such an offence.

Administrative  
penalties: forms.

39. - (1) The prescribed forms for the purposes of section 18 of the Ordinance (administrative penalties) are those set out as models in the Schedule to these Regulations and include any form which substantially corresponds to a model there set out.

(2) For the purposes of paragraph (1), a form may substantially correspond to a model set out in the Schedule to these Regulations notwithstanding any minor departure therefrom or minor variation thereof unless that departure or variation is shown, by the person upon whom the form is served, to have misled him, or otherwise prejudiced him, in any material respect.

17 December 1993

T. G. Harris  
(Commissioner)

FORM A

THE BRITISH INDIAN OCEAN TERRITORY

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1991

Notice of Alleged Offence  
(Notice given under section 18(1))

No. .... of 19 ..

IN THE MATTER of section 18 of the Fisheries  
(Conservation and Management) Ordinance 1991

To: .....  
.....  
.....  
.....  
.....

1. TAKE NOTICE that the Commissioner has reasonable cause to believe that on  
..... day, the ..... day of ..... 19.., at (specify place)

.....  
.....  
.....

you committed an offence under (specify section or regulation) .....  
.....  
.....

in that you (specify brief details of alleged offence) .....

.....

.....

.....

.....

.....

.....

.....

and that it would be appropriate to impose a penalty for that offence under section 18 of the Fisheries (Conservation and Management) Ordinance 1991.

2. The following is a summary of the facts on which this allegation is based:

.....

.....

.....

.....

.....

.....

.....

.....

(Give a sufficient summary fully and fairly to inform the recipient of the allegation against him)

3. The Commissioner considers the following matters to be relevant to the imposition of a penalty in this case:

.....

.....

.....

.....

.....

4. This notice is served on you pursuant to section 18 of the Fisheries (Conservation and Management) Ordinance 1991. The provisions of that section are set out in the attachment to this notice. Your attention is drawn to the options open to you under subsections (3) and (4) and to the consequences, under subsection (5), of your failing to exercise either option within 28 days of the service on you of this notice.

:

Dated this ..... day of .....19....

.....  
(Name and designation of signatory of notice)

(Attachment: A legible copy of the full provisions of section 18 of the Ordinance must be attached to Form A when it is served on the alleged offender. The copy may be in any convenient form, including a photocopy of an extract from a copy of the Ordinance.)

FORM B

THE BRITISH INDIAN OCEAN TERRITORY

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1991

Notice Requiring Proceedings to be Dealt with by Court  
(Notice given under section 18(3))

To: The Commissioner

TAKE NOTICE that I require that any proceedings in respect of the alleged offence referred to in your Notice No. . . . . , served on me under section 18(1) of the Fisheries (Conservation and Management) Ordinance 1991, shall be dealt with by the Court.

Dated this ..... day of .....19....

.....  
(Signature of person giving this notice)

FORM C

THE BRITISH INDIAN OCEAN TERRITORY

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1991

Notice Admitting Offence  
(Notice given under section 18(4))

To: The Commissioner

1. I refer to the Notice No. . . . . served on me under section 18(1) of the Fisheries (Conservation and Management) Ordinance 1991. In accordance with section 18(4), I admit the offence specified in that Notice.

2. I wish you to take the following matters into account in imposing a penalty:

.....  
.....  
.....  
.....

Dated this ..... day of .....19....

.....  
(Signature of person giving this notice)



FORM D

THE BRITISH INDIAN OCEAN TERRITORY

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1991

Imposition of Administration Penalty  
(Notice given under section 18(8))

No. .... of 19 ..

IN THE MATTER of section 18 of the Fisheries  
(Conservation and Management) Ordinance 1991

To: .....  
.....  
.....  
.....  
.....

1. TAKE NOTICE that, in accordance with section 18(6) of the Ordinance, the Commissioner has, on the . . . . day of . . . . . 19. . , imposed on you a monetary penalty of £ . . . . . in respect of the offence committed by you on the . . . . day of . . . . . 19 .. under (specify section or regulation) .....

.....  
.....  
.....

2. This penalty must be paid, within 28 days after this Notice is served on you, to the Director of Fisheries either through the Commissioner's Representative in the British Indian Ocean Territory or at the following address:

"The Director of Fisheries,  
British Indian Ocean Territory,  
c/o Marine Resources Assessment Group Limited,  
8, Prince's Gardens,  
LONDON, SW7 1NA,  
ENGLAND."

Dated this ..... day of .....19....

.....  
(Name and designation of signatory of notice)

**ANNEX 59**

BIOT Ordinance No. 1 of 1993

THE BRITISH INDIAN OCEAN TERRITORY.  
Ordinance No.1 of 1993.

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Amendment of S.4 of Ordinance of 1991.	2.

# **THE BRITISH INDIAN OCEAN TERRITORY**

ORDINANCE No. 1 of 1993

An ordinance to amend the Fisheries (Conservation and Management)  
Ordinance 1991.

Enacted by the Commissioner for the British Indian Ocean Territory.

1 February 1993      Commissioner

Short title and  
commencement

1. This Ordinance may be cited as the Fisheries (Conservation and Management) (Amendment) Ordinance 1993 and shall come into force on 1 February 1993.

Amendment of  
S.4 of  
Ordinance of  
1991.

2. Section 4 of the Fisheries (Conservation and Management) Ordinance 1991 is amended by the addition at the end of subsection (11) thereof of the following proviso:—

Provided that the foregoing provisions of this subsection shall apply only to fishing in which there is, or there is to be, at any one time no more than two lines in use under the control of any one person.

**ANNEX 60**

BIOT Ordinance No. 5 of 1993

THE BRITISH INDIAN OCEAN TERRITORY.  
Ordinance No.5 of 1993.  
An Ordinance to further to amend the Fisheries (Conservation and  
Management) Ordinance 1991

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Amendment of s.4 of principal Ordinance.	2.
3.	Amendment of s.5 of principal Ordinance.	2.
4.	Amendment of s.7 of principal Ordinance	3.
5.	Amendment of s.14 of principal Ordinance	3.
6.	Amendment of s.18 of principal Ordinance	3.
7.	Amendment of s.21 of principal Ordinance	3.

THE BRITISH INDIAN OCEAN TERRITORY  
ORDINANCE No. 5 of 1993

An Ordinance to further to amend the Fisheries (Conservation and Management) Ordinance 1991

Enacted by the Commissioner for the British Indian Ocean Territory.

T. G. Harris

17 December 1993    Commissioner

Short title and commencement.

1. — (1) This Ordinance may be cited as the Fisheries (Conservation and Management) (Amendment) (No.2) Ordinance 1993 and shall be construed as one with the Fisheries (Conservation and Management) Ordinance 1991 (hereinafter referred to as “the principal Ordinance.”)

Amendment of s.4 of principal Ordinance.

(2) This Ordinance shall come into force on 1 January 1994 and shall thereafter be deemed to have come into force together with the principal Ordinance (that is to say, on 1 October 1991.)

2. Section 4 of the principal Ordinance is amended by the deletion of subsection (6) and the substitution therefor of the following: “(6) Without prejudice to any liability for an offence under

subsection (1) or under section 7, the master of a fishing boat on which there is found, within the fishing waters, fish that has been caught or taken within those waters otherwise than under the authority of and in accordance with a fishing licence or that has been transhipped to that boat otherwise than under the authority of and in accordance with a transhipment licence shall be guilty of an offence; and in any proceedings for an offence under this subsection (and without prejudice to section 15(4)) the onus of proving—

(a) that the fish was not caught or taken within the fishing waters; or, alternatively,

(b) that it was caught or taken under the authority of an accordance with a fishing licence; or, alternatively,

(c) that it was transhipped to that boat under the authority of in accordance with a transhipment licence shall lie on the accused.

PENALTY - £200,000

Amendment of s.5 of principal Ordinance.

3. Section 5 of the principal Ordinance is amended by the insertion subsection (1), immediately after the words “on board the boat”, of a se colon followed by the words “and a master who fails without reasons excuse to comply with that requirement or who, in pursuance of requirement, gives a notification which he knows to be false or reckless gives a notification which is false shall be guilty of an offence”.



Amendment of  
s.7 of principal  
Ordinance

4. Section 7 of the principal Ordinance is amended—

- (a) by the insertion in subsection (1), immediately after the word “the transshipment”, of the words “of fish”;
- (b) by the deletion of the proviso to subsection (2); and
- (c) by the deletion of the word “shipment” in subsection (3) and the substitution therefor of the word “transshipment”.

Amendment of  
s.14 of principal  
Ordinance

5. Section 14 of the principal Ordinance is amended by the insertion therein, immediately after the words “in pursuance of this Ordinance”, the words “or any such regulations”.

Amendment of  
s.18 of principal  
Ordinance

6. Section 18 of the principal Ordinance is amended—

- (a) by the deletion from subsection (2) of the words “and shall endorsed with a statement setting out the provisions of t1 section” and the substitution therefor of the words “and a copy of the provisions of this section shall be attached thereto”; and
- (b) by the insertion in subsection (4), immediately after the word “by notice in writing”, of the words “in the prescribed form”,

Amendment of  
s.21 of principal  
Ordinance

7. Section 21 of the principal Ordinance is amended—

- (a) by the insertion in subsection (2), immediately after the word “such regulations may provide for”, of the words “or may authorise the Director of Fisheries to provide for or determine”;
- (b) by the deletion from subsection (2) (i) of the words “in the British Indian Ocean Territory”; and
- (c) by the insertion in subsection (2), immediately after the said paragraph (i), of the following new paragraph as paragraph (ii) of and in “(ii) the place or places where persons who are to be designated as such authorised agents may reside or have their place of business;”.

## **ANNEX 61**

Indian Ocean Tuna Commission Agreement, November 1993

# **AGREEMENT FOR THE ESTABLISHMENT OF THE INDIAN OCEAN TUNA COMMISSION**

## **PREAMBLE**

The Contracting Parties,

Recognizing the desirability of promoting the peaceful uses of the seas and oceans, and the equitable and efficient utilization and conservation of their living resources,

Desiring to contribute to the realization of a just and equitable international economic order, with due regard to the special interests and needs of developing countries,

Desiring to cooperate with a view to ensuring the conservation of tuna and tuna-like species in the Indian Ocean and promoting their optimum utilization, and the sustainable development of the fisheries,

Recognizing, in particular, the special interests of developing countries in the Indian Ocean Region to benefit equitably from the fishery resources,

Considering the United Nations Convention on the Law of the Sea opened for signature on 10 December 1982 and, in particular, Articles 56, 64 and 116 to 119 thereof,

Considering that the conservation of tuna and tuna-like species and the sustainable and rational utilization of tuna resources in the Indian Ocean would be greatly enhanced by the establishment of cooperative measures by both the coastal states of the Indian Ocean and other States whose nationals harvest tuna and tuna-like species in the region,

Bearing in mind the Western Indian Ocean Tuna Organization Convention which was opened for signature on 19 June 1991,

Considering that the aforementioned objectives could best be achieved through the establishment of a Commission set up under Article XIV of the Constitution of the Food and Agriculture Organization of the United Nations,

Have agreed as follows:

### **Article I. ESTABLISHMENT**

The Contracting Parties hereby agree to establish the Indian Ocean Tuna Commission (hereinafter referred to as the "Commission") within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO").

### **Article II. AREA OF COMPETENCE**

The area of competence of the Commission (hereinafter referred to as the "Area") shall be the Indian Ocean (defined for the purpose of this Agreement as being FAO statistical areas 51 and 57 as shown on the map set out in Annex A to this Agreement) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.

### **Article III. SPECIES AND STOCKS**

The species covered by this Agreement shall be those set out in Annex B. The term "stocks" means the populations of such species which are located in the Area or migrate into or out of the Area.

### **Article IV. MEMBERSHIP**

1. Membership in the Commission shall be open to Members and Associate Members of FAO

(a) that are:

(i) coastal States or Associate Members situated wholly or partly within the Area;

- (ii) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement; or
- (iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement;

and

(b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII.

2. The Commission may, by a two-thirds majority of its Members, admit to membership any other States that are not Members of FAO, but are Members of the United Nations, or of any of its Specialized Agencies or of the International Atomic Energy Agency, provided that such States:

- (a) are
  - (i) coastal States situated wholly or partly within the Area; or
  - (ii) States whose vessels engage in fishing in the Area for stocks covered by this Agreement; and
- (b) have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of acceptance in accordance with paragraph 2 of Article XVII.

3. With a view to furthering the objectives of this Agreement, the Members of the Commission shall cooperate with each other to encourage any State or regional economic integration organization which is entitled to become, but is not yet, a Member of the Commission, to accede to this Agreement.

4. If any Member of the Commission ceases to meet the criteria set out in paragraphs 1 or 2 above for two consecutive calendar years, the Commission may, after consultation with the Member concerned, determine that the Member is deemed to have withdrawn from this Agreement effective as from the date of that determination.

5. For the purposes of this Agreement, the term "whose vessels" in relation to a Member Organization means vessels of a Member State of such Member Organization.

6. Nothing in this Agreement, nor any act or activity carried out in pursuance of this Agreement, shall be interpreted as changing or in any way affecting the position of any party to this Agreement with respect to the legal status of any area covered by this Agreement.

#### **Article V. OBJECTIVES, FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSION**

1. The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.

2. In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea:

- (a) to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by this Agreement;
- (b) to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by this Agreement, and such other activities as the

Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries;

- (c) to adopt, in accordance with Article IX and on the basis of scientific evidence, conservation and management measures, to ensure the conservation of the stocks covered by this Agreement and to promote the objective of their optimum utilization throughout the Area;
- (d) to keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;
- (e) to consider and approve its programme and autonomous budget, as well as the accounts for the past budgetary period;
- (f) to transmit to the Director-General of FAO (hereinafter referred to as the "Director-General") reports on its activities, programme, accounts and autonomous budget and on such other matters as may be appropriate for action by the Council or the Conference of FAO;
- (g) to adopt its own Rules of Procedure, Financial Regulations and other internal administrative regulations as may be necessary to carry out its functions; and
- (h) to carry out such other activities as may be necessary to fulfil its objectives as set out above.

3. The Commission may adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement.

#### **Article VI. SESSIONS OF THE COMMISSION**

1. Each Member of the Commission shall be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

2. Each Member of the Commission shall have one vote. Unless otherwise provided in this Agreement, decisions and recommendations of the Commission shall be taken by a majority of the votes cast. A majority of the Members of the Commission shall constitute a quorum.

3. The Commission may adopt and amend, as required, its own Rules of Procedure by a two-thirds majority of its Members, which Rules shall not be inconsistent with this Agreement or with the Constitution of FAO.

4. The Chairperson of the Commission shall convene an annual regular session of the Commission.

5. Special sessions of the Commission may be convened by the Chairperson of the Commission at the request of at least one-third of its Members.

6. The Commission shall elect its Chairperson and no more than (two) Vice-Chairpersons, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than four years in succession. In electing the Chairperson and the Vice-Chairpersons the Commission shall pay due regard to the need for an equitable representation from among the Indian Ocean States.

7. The Commission may adopt and amend, as required, the Financial Regulations of the Commission by a two-thirds majority of its Members, which Financial Regulations shall be consistent with the principles embodied in the Financial Regulations of FAO. The Financial Regulations and amendments thereto shall be reported to the Finance Committee of FAO which shall have the power to disallow them if it finds that they are inconsistent with the principles embodied in the Financial Regulations of FAO.

8. In order to ensure close cooperation between the Commission and FAO, FAO shall have the right to participate without vote in all meetings of the Commission and subsidiary bodies established in accordance with paragraph 5 of Article XII.

## **Article VII. OBSERVERS**

1. Any Member or Associate Member of FAO that is not a Member of the Commission may, upon its request, be invited to be represented by an observer at sessions of the Commission. It may submit memoranda and participate without vote in the discussions.
2. States which, while not Members of the Commission nor Members or Associate Members of FAO, are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon request and subject to the concurrence of the Commission through its Chairperson and to the provisions relating to the granting of observer status to nations adopted by the Conference of FAO, be invited to attend sessions of the Commission as observers.
3. The Commission may invite intergovernmental or, on request, non-governmental organizations having special competence in the field of activity of the Commission to attend such of its meetings as the Commission may specify.

## **Article VIII. ADMINISTRATION**

1. The Secretary of the Commission (hereinafter referred to as the "Secretary") shall be appointed by the Director-General with the approval of the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Members of the Commission. The staff of the Commission shall be appointed by the Secretary and shall be under the Secretary's direct supervision. The Secretary and staff of the Commission shall be appointed under the same terms and conditions as staff members of FAO; they shall, for administrative purposes, be responsible to the Director-General.
2. The Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. The Secretary shall also act as Secretary to other subsidiary bodies established by the Commission, as required.
3. The expenses of the Commission shall be paid out of its autonomous budget except those relating to such staff and facilities as can be made available by FAO. The expenses to be borne by FAO shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of FAO in accordance with the General Rules and the Financial Regulations of FAO.
4. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission, its sub-commissions and its committees, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. The expenses of experts invited by the Commission to attend, in their individual capacity, meetings of the Commission or its sub-commissions or committees shall be borne by the budget of the Commission.

## **Article IX. PROCEDURES CONCERNING CONSERVATION AND MANAGEMENT MEASURES**

1. Subject to paragraph 2, the Commission may, by a two-thirds majority of its Members present and voting, adopt conservation and management measures binding on Members of the Commission in accordance with this Article.
2. Conservation and management measures for stocks for which a sub-commission has been established under paragraph 2 of Article XII, shall be adopted upon the proposal of the sub-commission concerned.
3. The Secretary shall, without undue delay, notify the Members of the Commission of any conservation and management measures adopted by the Commission.
4. Subject to paragraphs 5 and 6, conservation and management measures adopted by the Commission under paragraph 1, shall become binding on Members 120 days from the date specified in the Secretary's notification or on such other date as may be specified by the Commission.
5. Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 4, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure shall not be bound

thereby. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.

6. If objections to a measure adopted under paragraph 1 are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.

7. The Secretary shall notify each Member of the Commission immediately upon receipt of each objection or withdrawal of objection.

8. The Commission may, by a simple majority of its Members present and voting, adopt recommendations concerning conservation and management of the stocks for furthering the objectives of this Agreement.

#### **Article X. IMPLEMENTATION**

1. Each Member of the Commission shall ensure that such action is taken, under its national legislation, including the imposition of adequate penalties for violations, as may be necessary to make effective the provisions of this Agreement and to implement conservation and management measures which become binding on it under paragraph 1 of Article IX.

2. Each Member of the Commission shall transmit to the Commission an annual statement of the actions it has taken pursuant to paragraph 1. Such statement shall be sent to the Secretary of the Commission not later than 60 days before the date of the following regular session of the Commission.

3. The Members of the Commission shall cooperate, through the Commission, in the establishment of an appropriate system to keep under review the implementation of conservation and management measures adopted under paragraph 1 of Article IX, taking into account appropriate and effective tools and techniques to monitor the fishing activities and to gather the scientific information required for the purposes of this Agreement.

4. The Members of the Commission shall cooperate in the exchange of information regarding any fishing for stocks covered by this Agreement by nationals of any State or entity which is not a Member of the Commission.

#### **Article XI. INFORMATION**

1. The Members of the Commission shall, on the request of the Commission, provide such available and accessible statistical and other data and information as the Commission may require for the purposes of this Agreement. The Commission shall decide the scope and form of such statistics and the intervals at which they shall be provided. The Commission shall also endeavour to obtain fishing statistics from fishing States or entities which are not Members of the Commission.

2. Each Member of the Commission shall provide to the Commission copies of laws, regulations and administrative instructions in force or, where appropriate, summaries thereof, relating to the conservation and management of stocks covered by this Agreement and shall inform the Commission of any amendment or repeal of such laws, regulations and administrative instructions.

#### **Article XII. SUBSIDIARY BODIES**

1. The Commission shall establish a permanent Scientific Committee.

2. The Commission may establish sub-commissions to deal with one or more of the stocks covered by this Agreement.

3. Such sub-commissions shall be open to Members of the Commission which are coastal States lying on the migratory path of the stocks concerned in the sub-commission or are States whose vessels participate in the fisheries of these stocks.

4. A sub-commission shall provide a forum for consultation and cooperation on matters related to the management of the stocks concerned and in particular:

- (a) to keep under review the stocks concerned and to gather scientific and other relevant information relating to the stocks concerned;
- (b) to assess and analyse the conditions and trends of the stocks concerned;
- (c) to coordinate research and studies of the stocks concerned;
- (d) to report to the Commission on its findings;
- (e) to propose such recommendations for action by the Members of the Commission as may be appropriate, including action to obtain necessary information relating to the stocks and proposals for conservation and management measures;
- (f) to consider any matter referred to it by the Commission.

5. The Commission may, subject to the provisions of this Article, establish such committees, working parties or other subsidiary bodies as may be necessary for the purposes of this Agreement.

6. The establishment by the Commission of any sub-commission which requires funding by the Commission, and of any committee, working party or other subsidiary body shall be subject to the availability of the necessary funds in the approved autonomous budget of the Commission or of FAO as the case may be. When the related expenses are to be borne by FAO, the determination of such availability shall be made by the Director-General. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Commission shall have before it a report from the Secretary or the Director-General, as appropriate, on the administrative and financial implications.

7. Subsidiary bodies shall provide to the Commission such information regarding their activities as the Commission may require.

### **Article XIII. FINANCES**

1. Each Member of the Commission undertakes to contribute annually its share of the autonomous budget in accordance with a scale of contributions to be adopted by the Commission.

2. At each regular session, the Commission shall adopt its autonomous budget by consensus of its Members provided, however, that if, after every effort has been made, a consensus cannot be reached in the course of that session, the matter will be put to a vote and the budget shall be adopted by a two-thirds majority of its Members.

3. (a) The amount of the contribution of each Member of the Commission shall be determined in accordance with a scheme which the Commission shall adopt and amend by consensus.

(b) In adopting the scheme, due consideration shall be given to each Member being assessed an equal basic fee and a variable fee based, inter alia, on the total catch and landings of species covered by this Agreement in the Area, and the per capita income of each Member.

(c) The scheme adopted or amended by the Commission shall be set out in the Financial Regulations of the Commission.

4. Any non-Member of FAO that becomes a Member of the Commission shall be required to make such contribution towards the expenses incurred by FAO with respect to the activities of the Commission as the Commission may determine.

5. Contributions shall be payable in freely convertible currencies unless otherwise determined by the Commission with the concurrence of the Director-General.

6. The Commission may also accept donations and other forms of assistance from organizations, individuals and other sources for purposes connected with the fulfilment of any of its functions.



7. Contributions and donations and other forms of assistance received shall be placed in a Trust Fund administered by the Director-General in conformity with the Financial Regulations of FAO.

8. A Member of the Commission which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member.

#### **Article XIV. HEADQUARTERS**

The Commission, after consultation with the Director-General, shall determine the place of its headquarters.

#### **Article XV. COOPERATION WITH OTHER ORGANIZATIONS AND INSTITUTIONS**

1. The Commission shall cooperate and make appropriate arrangements therefore with other intergovernmental organizations and institutions, especially those active in the fisheries sector, which might contribute to the work and further the objectives of the Commission in particular with any intergovernmental organization or institution dealing with tuna in the Area. The Commission may enter into agreements with such organizations and institutions. Such agreements shall seek to promote complementarity and, subject to paragraph 2, to avoid duplication in and conflict with the activities of the Commission and such organizations.

2. Nothing in this Agreement shall prejudice the rights and responsibilities of other intergovernmental organizations or institutions dealing with tuna or a species of tuna in the Area or the validity of any measures adopted by such organization or institution.

#### **Article XVI. COASTAL STATES' RIGHTS**

This Agreement shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.

#### **Article XVII. ACCEPTANCE**

1. Acceptance of this Agreement by any Member or Associate Member of FAO shall be effected by the deposit of an instrument of acceptance with the Director-General.

2. Acceptance of this Agreement by any State referred to in paragraph 2 of Article IV shall be effected by the deposit of an instrument of acceptance with the Director-General. Acceptance shall become effective on the date on which the Commission approves the application for membership.

3. The Director-General shall inform all Members of the Commission, all Members of FAO and the Secretary-General of the United Nations of all acceptances that have become effective.

#### **Article XVIII. ENTRY INTO FORCE**

This Agreement shall enter into force as from the date of receipt by the Director-General of the tenth instrument of acceptance. Thereafter, with respect to each Member or Associate Member of FAO or State referred to in paragraph 2 of Article IV which subsequently deposits an instrument of acceptance, this Agreement shall enter into force on the date on which such acceptance takes effect or becomes effective in accordance with Article XVII above.

#### **Article XIX. RESERVATIONS**

Acceptance of this Agreement may be made subject to reservations in accordance with the general rules of public international law as reflected in the provisions of Part II, Section 2 of the Vienna Convention on the Law of Treaties of 1969.

#### **Article XX. AMENDMENT**

1. This Agreement may be amended by a three-quarters majority of the Members of the Commission.

2. Proposals for amendments may be made by any Member of the Commission or by the Director- General. Proposals made by a Member of the Commission shall be addressed to both the Chairperson of the Commission and the Director-General and those made by the Director-General shall be addressed to the Chairperson of the Commission, not later than 120 days before the Session of the Commission at which the proposal is to be considered. The Director-General shall immediately inform all Members of the Commission of all proposals for amendments.

3. Any amendment to this Agreement shall be reported to the Council of FAO which may disallow an amendment which is clearly inconsistent with the objectives and purposes of FAO or the provisions of the Constitution of FAO.

4. Amendments not involving new obligations for Members of the Commission shall take effect for all Members from the date of their adoption by the Commission, subject to paragraph 3 above.

5. Amendments involving new obligations for Members of the Commission shall, after adoption by the Commission, subject to paragraph 3 above, come into force in respect of each Member only upon its acceptance thereof. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General. The Director-General shall inform all Members of the Commission and the Secretary-General of the United Nations of such acceptance. The rights and obligations of any Member of the Commission that has not accepted an amendment involving new obligations shall continue to be governed by the provisions of this Agreement in force prior to the Amendment.

6. Amendments to the Annexes to this Agreement may be adopted by a two-thirds majority of the Members of the Commission and shall come into force from the date of approval by the Commission.

7. The Director-General shall inform all Members of the Commission, all Members and Associate Members of FAO and the Secretary-General of the United Nations of the entry into force of any amendment.

#### **Article XXI. WITHDRAWAL**

1. Any Member of the Commission 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 Member, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Members of the Commission and the Members and Associate Members of FAO and the Secretary- General of the United Nations 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.

2. A Member of the Commission may give notice of withdrawal with respect to one or more of the territories for the international relations of which it is responsible. When a Member gives notice of its own withdrawal from the Commission, it shall state to which territory or territories the withdrawal is to apply. In the absence of such a statement, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, with the exception of territories belonging to an Associate Member which is a Member of the Commission in its own right.

3. Any Member of the Commission that gives notice of withdrawal from FAO shall be deemed to have simultaneously withdrawn from the Commission, and this withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, with the exception of territories belonging to an Associate Member which is a Member of the Commission in its own right.

4. Withdrawal may also take place as provided for under paragraph 4 of Article IV.

#### **Article XXII. TERMINATION**

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Members of the Commission drops below ten, unless the remaining Members of the Commission unanimously decide otherwise.

### **Article XXIII. INTERPRETATION AND SETTLEMENT OF DISPUTES**

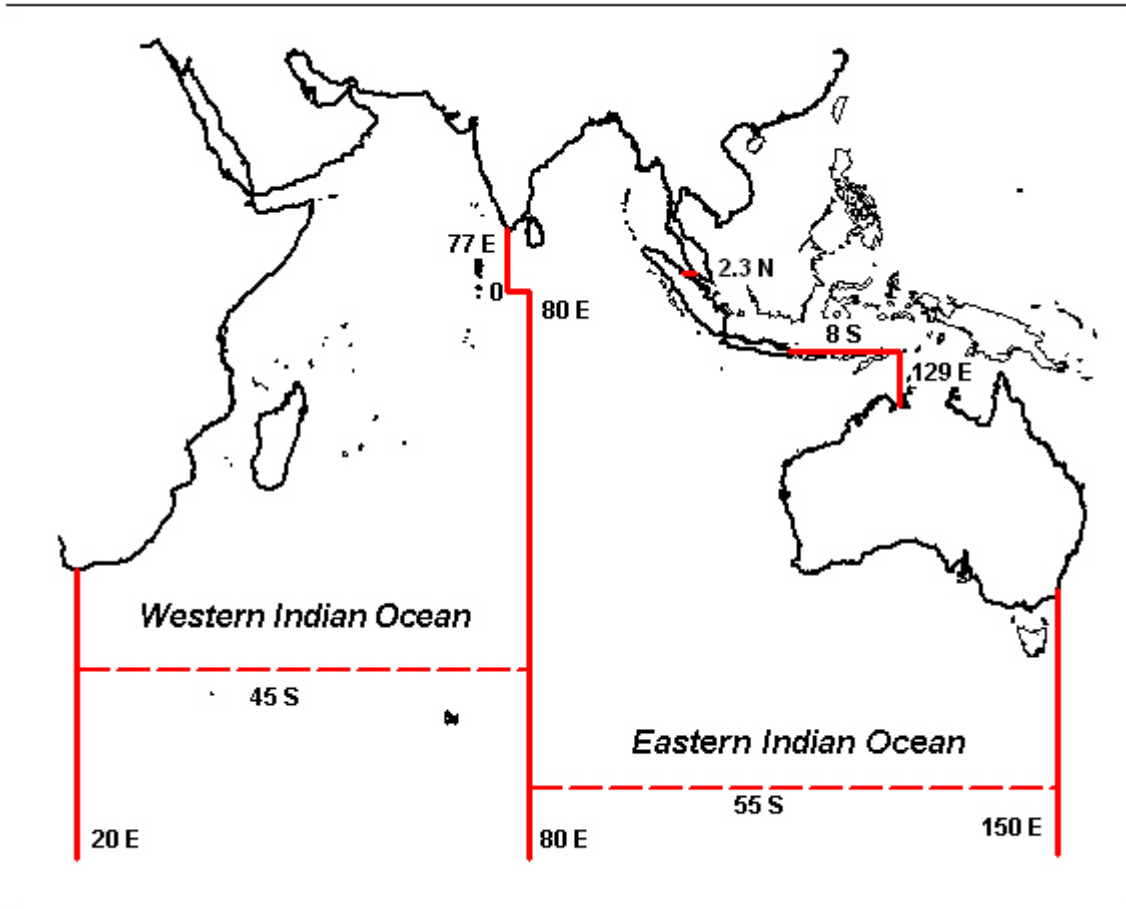
Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.

### **Article XXIV. 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 which has accepted this Agreement and any non-Member State which has been admitted to membership in the Commission of:
  - (i) the application of a non-Member State to be admitted to membership in the Commission;
  - (ii) proposals for the amendment of this Agreement or of the Annexes thereto;
- (d) inform each Member and Associate Member of FAO and any non-Member States as may become party to this Agreement of:
  - (i) the deposit of instruments of acceptance in accordance with Article XVII;
  - (ii) the date of entry into force of this Agreement in accordance with Article XVIII;
  - (iii) reservations made to this Agreement in accordance with Article XIX;
  - (iv) the adoption of amendments to this Agreement in accordance with Article XX;
  - (v) withdrawals from this Agreement pursuant to Article XXI; and
  - (vi) termination of this Agreement in accordance with Article XXII.

Annex A



## Annex B

FAO English name	Nom FAO en français	Nombre FAO en español	Scientific name
Nom FAO en anglais	FAO French name	FAO Spanish name	Nom scientifique
Nombre FAO en inglés	Nombre FAO en francés	Nom FAO en español	Nombre científico
1. Yellowfin tuna	Albacore	Rabil	<i>Thunnus albacares</i>
2. Skipjack	Listao; Bonite à ventre rayé	Listado	<i>Katsuwonus pelamis</i>
3. Bigeye tuna	Patudo; Thon obèse	Patudo	<i>Thunnus obesus</i>
4. Albacore tuna	Germon	Atún blanco	<i>Thunnus alalunga</i>
5. Southern Bluefin tuna	Thon rouge du sud	Atún del sur	<i>Thunnus maccoyii</i>
6. Longtail tuna	Thon mignon	Atún tongol	<i>Thunnus tonggol</i>
7. Kawakawa	Thonine orientale	Baroceta oriental	<i>Euthynnus affinis</i>
8. Frigate tuna	Auxide	Melva	<i>Auxis thazard</i>
9. Bullet tuna	Bonitou	Melva (= Melvera)	<i>Auxis rochei</i>
10. Narrow barred Spanish Mackerel	Thazard rayé	Carite estraido (Indo- Pacífico)	<i>Scomberomorus commerson</i>
11. Indo-Pacific king mackerel	Thazard ponctué	Carite (Indo-Pacífico)	<i>Scomberomorus guttatus</i>
12. Indo-Pacific Blue Marlin	Makaire bleu de l'Indo Pacifique	Aguja azul (Indo-Pacífico)	<i>Makaira mazara</i>
13. Black Marlin	Makaire noir	Aguja negra	<i>Makaira indica</i>
14. Striped Marlin	Marlin rayé	Marlín rayado	<i>Tetrapturus audax</i>
15. Indo-Pacific Sailfish	Voilier de l'Indo-Pacifique	Pez vela (Indo-Pacífico)	<i>Istiophorus platypterus</i>
16. Swordfish	Espadon	Pez espada	<i>Xiphias gladius</i>

## **ANNEX 62**

Joint Statement on the Conservation of Fisheries under a 'sovereignty umbrella', 27 January  
1994

JOINT STATEMENT ON THE CONSERVATION OF FISHERIES

1. Delegations of the British and Mauritian Governments met in London on 27 January 1994. Both delegations agreed that the following formula on Sovereignty applies to this Statement and its results.

(1) Nothing in the present joint statement or anything resulting from it is to be interpreted as:

- (a) a change in the position of the United Kingdom with regard to sovereignty or territorial and maritime jurisdiction over the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas;
- (b) a change in the position of the Republic of Mauritius with regard to sovereignty or territorial or maritime jurisdiction over the Chagos Archipelago (British Indian Ocean Territory) and the surrounding maritime areas;
- (c) recognition of or support for the position of the United Kingdom or the Republic of Mauritius with regard to sovereignty or territorial and maritime jurisdiction over the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas;

(2) No act or activity carried out by the United Kingdom, the Republic of Mauritius or third parties as a consequence and in implementation of anything accepted in the present Joint Statement shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or the Republic of Mauritius regarding the sovereignty or territorial and maritime jurisdiction over the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas.

2. In order to contribute to the conservation of fish stocks, the two Governments agree to open the way for co-operation in this field on an ad hoc basis by means of the establishment of the British-Mauritian Fisheries Commission, composed of delegations from both States, to promote, facilitate and co-ordinate conservation and scientific research in the maritime area covered by this Statement.

3. The Commission will be composed of a delegation from each of the two States and will meet at least once a year alternately in Port Louis and London or such other venue as may be mutually acceptable. Recommendations will be reached by mutual agreement.

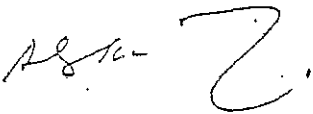
4. The definition of the maritime area in the waters of concern to the Chagos Archipelago (British Indian Ocean Territory), which the Commission will consider in relation to the conservation of fish stocks, will be agreed upon by both Governments.

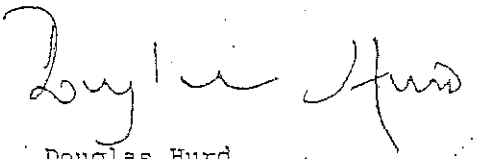
5. The Commission will have the following functions:

- (a) To receive from both States the available information on the operations of the fishing fleets, appropriate catch and effort statistics and analyses of the status of the stocks of the most significant off-shore species. Both Governments will provide such information in the form recommended by the Commission.
- (b) To assess the information received and to submit to both Governments recommendations for the conservation of the most significant off-shore species in the area, including co-ordinated measures where applicable.
- (c) To propose to both Governments joint scientific research work including joint stock assessments on the most significant off-shore species.
- (d) In accordance with international law to recommend to both Governments possible actions for the conservation in international waters of migratory and straddling stocks and species related to them.
- (e) To review the scope for joint co-operation on other resources within the waters referred to in this Joint Statement and to submit recommendations to both Governments for incorporation into an agreement.

6. Each Government will take the appropriate administrative measures in accordance with this Joint Statement.

7. Signed in duplicate at London this 27th day of January 1994.

  
Dr. the Hon. Ahmad Swaley Kasenally  
Minister of External Affairs

  
Douglas Hurd,  
Secretary of State for Foreign  
and Commonwealth Affairs



## **ANNEX 63**

Joint communiqué, British/Mauritian Fishing Commission, 28 April 1994

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06 MAY 1994

JOINT COMMUNIQUE

BRITISH/MAURITIAN FISHERIES COMMISSION

(1) The first meeting of the British/Mauritian Fisheries Commission took place at the Ministry of External Affairs, Port Louis between 26 and 28 April 1994. The Mauritius delegation was led by Ambassador Vijay S. Makhan, Secretary for Foreign Affairs. The British delegation was led by Mr Don Cairns, Head of Indian Ocean Section, Foreign and Commonwealth Office and Director of Fisheries of the British Indian Ocean Territory.

(2) On the issue of sovereignty of the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas, both delegations agreed that the meeting of the Commission, and anything resulting from it, would be governed by the formula set out in paragraph 1 of the Joint Statement on Conservation of Fisheries signed in London on 27 January 1994.

(3) The meeting then proceeded to establish the British/Mauritian Fisheries Commission. The composition of the delegations is recorded in the annex hereto. It was agreed that representatives from other Ministries and institutions would be co-opted to the Commission whenever necessary, depending upon the subject of discussion.

(4) The Commission then reviewed the Joint Statement signed in London on 27 January 1994 and proceeded to examine the Commission's terms of reference which, it was agreed, would be governed by the elements contained in the Joint Statement.

(5) The Commission viewed with concern that fish stocks, especially migratory species such as tuna, might be heavily exploited. In this respect, the need for conservation of fish stocks in order to ensure their sustainable development was emphasised.


(6) The Commission agreed to recommend to their Governments that for the purposes of conservation of fish stocks of concern to both Governments, some of which were known to be highly migratory, the maritime area for purposes of scientific discussion, should be as large as practically possible. In this respect, both delegations made proposals, which the Commission agreed required further examination at the level of their respective Governments and that this issue would be discussed further at the next meeting of the Commission.

(7) In the interim, the Commission agreed to recommend to their Governments that data on statistics of catch, effort and species composition of catch available to each Government in the waters of concern to them in the Indian Ocean should be presented to the Commission.

(8) The Commission also expressed concern about illegal fishing. In this respect it agreed to recommend to their Governments that data should be exchanged on the movements of fishing fleets within the area mentioned at paragraph 7 above, with a view to the prevention of illegal fishing.

(9) The Commission agreed to recommend to their Governments that a scientific sub-committee, subordinate to the Commission, be set up. This sub-committee would meet in conjunction with meetings of the Commission and make recommendations to the Commission on appropriate measures to enhance the conservation of stocks.

Port Louis 28 April 1994



(10) The Commission agreed to recommend to their Governments that the meetings of the Commission be held at least once a year, alternately in Port Louis and London, or any other venue to be agreed upon by both delegations.

The first meeting of the British/Mauritian Fisheries Commission was held in a friendly and positive atmosphere and its deliberations were guided by a cooperative spirit.

The second meeting of the British/Mauritian Fisheries Commission will take place in London.



Ambassador Vijay S. Makhan,  
Head of the Mauritius Delegation



Mr Don Cairns,  
Head of the British Delegation

Port Louis 28 April 1994

AGREED CONFIDENTIAL MINUTE

The British/Mauritian Fisheries Commission, at its first meeting, agreed to issue the following joint communique, recording decisions reached by the Commission:

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JOINT COMMUNIQUE

BRITISH/MAURITIAN FISHERIES COMMISSION

(1) The first meeting of the British/Mauritian Fisheries Commission took place at the Ministry of External Affairs, Port Louis between 26 and 28 April 1994. The Mauritius delegation was led by Ambassador Vijay S. Makhan, Secretary for Foreign Affairs. The British delegation was led by Mr Don Cairns, Head of Indian Ocean Section, Foreign and Commonwealth Office and Director of Fisheries of the British Indian Ocean Territory.

(2) On the issue of sovereignty of the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas, both delegations agreed that the meeting of the Commission, and anything resulting from it, would be governed by the formula set out in paragraph 1 of the Joint Statement on Conservation of Fisheries signed in London on 27 January 1994.

(3) The meeting then proceeded to establish the British/Mauritian Fisheries Commission. The composition of the delegations is recorded in the annex hereto. It was agreed that representatives from other Ministries and institutions would be co-opted to the Commission whenever necessary, depending upon the subject of discussion.

(4) The Commission then reviewed the Joint Statement signed in London on 27 January 1994 and proceeded to examine the Commission's terms of reference which, it was agreed, would be governed by the elements contained in the Joint Statement.

(5) The Commission viewed with concern that fish stocks, especially migratory species such as tuna, might be heavily exploited. In this respect, the need for conservation of fish stocks in order to ensure their sustainable development was emphasised.

(6) The Commission agreed to recommend to their Governments that for the purposes of conservation of fish stocks of concern to both Governments, some of which were known to be highly migratory, the maritime area for purposes of scientific discussion, should be as large as practically possible. In this respect, both delegations made proposals, which the Commission agreed required further examination at the level of their respective Governments and that this issue would be discussed further at the next meeting of the Commission.

(7) In the interim, the Commission agreed to recommend to their Governments that data on statistics of catch, effort and species composition of catch available to each Government in the waters of concern to them in the Indian Ocean should be presented to the Commission.

(8) The Commission also expressed concern about illegal fishing. In this respect it agreed to recommend to their Governments that data should be exchanged on the movements of fishing fleets within the area mentioned at paragraph 7 above, with a view to the prevention of illegal fishing.

(9) The Commission agreed to recommend to their Governments that a scientific sub-committee, subordinate to the Commission, be set up. This sub-committee would meet in conjunction with meetings of the Commission and make recommendations to the Commission on appropriate measures to enhance the conservation of stocks.

Port Louis 28 April 1994

(10) The Commission agreed to recommend to their Governments that the meetings of the Commission be held at least once a year, alternately in Port Louis and London, or any other venue to be agreed upon by both delegations.

The first meeting of the British/Mauritian Fisheries Commission was held in a friendly and positive atmosphere and its deliberations were guided by a cooperative spirit.

The second meeting of the British/Mauritian Fisheries Commission will take place in London.

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In addition the Commission noted the following:-

(1) It was agreed that for the purposes of paragraphs 7 and 8 of the Joint Communique, for the duration of the interim period, the waters of concern are the waters around Mauritius and the British Indian Ocean Territory (Chagos Archipelago).

Access of Mauritian vessels to British Indian Ocean Territory (Chagos Archipelago)

(2) The British Delegation indicated that access of inshore vessels would continue. However, to ensure the conservation of the stocks, this fishery would be subject to an observer programme. It was agreed that this should be a condition of licensing and that there would be a British and a Mauritian observer on board one vessel for the next season.


(3) It was agreed that the interim data exchange would occur through diplomatic channels and be as follows:

(i) The information would be provided from fishing occurring from 1 December 1993 onwards.

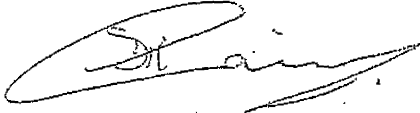
(ii) The data would be provided on a 1<sup>0</sup> square basis and by monthly intervals.

(iii) Catch would be broken down by main species in metric tonnes and effort would be in days fishing and number of sets of either longlines or purse seines.

(iv) Lists of licenced vessels in the waters around British Indian Ocean Territory (Chagos Archipelago) would be exchanged and there would be notification of any illegal activity detected in these waters including prosecutions.



Ambassador Vijay S. Makhan,  
Head of the Mauritius Delegation



Mr Don Cairns,  
Head of the British Delegation

Port Louis 28 April 1994

## **ANNEX 64**

Joint communiqué, British/Mauritian Fishing Commission, 17 March 1995

## JOINT COMMUNIQUE

### BRITISH/MAURITIAN FISHERIES COMMISSION

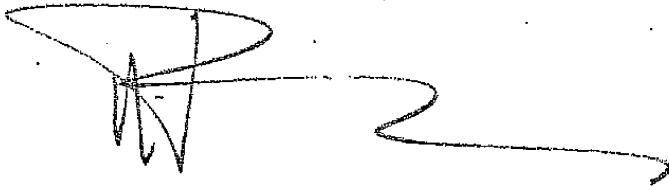
1. The second meeting of the British/Mauritian Fisheries Commission took place at the Foreign and Commonwealth Office, London on 16 and 17 March 1995. The Mauritius delegation was led by Ambassador Vijay S Makhan, Secretary for Foreign Affairs. The British delegation was led by Mr David MacLennan, Head of African Department (Equatorial), Foreign and Commonwealth Office and Commissioner of the British Indian Ocean Territory.
2. On the issue of sovereignty of the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas, both delegations recalled that the meeting of the Commission, and anything resulting from it, would be governed by the formula set out in paragraph 1 of the Joint Statement on Conservation of Fisheries signed in London on 27 January 1994.
3. The meeting then proceeded to review the report of the Scientific Sub-committee, and consider matters arising. The commission endorsed recommendations by the scientific sub-committee in relation to data exchange, inshore fisheries management and the observer programme and agreed to recommend these to their governments.
4. The Commission expressed satisfaction with the collaboration achieved in 1994/95. A number of tasks for 95/96 were identified by the scientific sub-committee concerning the inshore fisheries observer programme and technical aspects of data exchange for the tuna fisheries. These were approved by the Commission which agreed to recommend them to their governments.
5. The Commission then looked at prospects for 1995/96.
6. The Commission agreed on the need for appropriate conservation and management measures for the fishery resources. Current levels of activity were not considered to be outside sustainable limits although concerns were expressed in relation to localised fishing areas and stocks.
7. In considering the implications of illegal fishing, the Commission agreed there was scope for further cooperation in exchange of information on relevant fishing activities.
8. Following on from discussions in the first meeting of the Joint Fisheries Commission and taking account of scientific advice, the Commission agreed to recommend to their governments, that the area of waters of concern to the Commission under paragraph 4 of the Joint Statement on the Conservation of Fisheries should be based on the area within the following points:



Latitude 0° 0' (Equator), Longitude 53° 0' East  
Latitude 0° 0' (Equator), Longitude 77° 0' East  
Latitude 25° 0' (South), Longitude 77° 0' East  
Latitude 25° 0' (South), Longitude 53° 0' East

but excluding the Exclusive Economic Zones of the neighbouring countries. The area would therefore include the Fisheries Conservation and Management Zone of the BIOT (Chagos Archipelago), the Mauritian Exclusive Economic Zone and intervening international waters.

9. The second meeting of the British/ Mauritian Fisheries Commission was held in a friendly and positive atmosphere and its deliberations were guided by a co-operative spirit.



Mr D R MacLennan  
Head of the British Delegation



Ambassador Vijay S. Makhan  
Head of the Mauritian  
Delegation

London, 17 March 1995



**ANNEX 65**

BIOT Ordinance No. 2 of 1995

THE BRITISH INDIAN OCEAN TERRITORY.  
Ordinance No.2 of 1995.  
AN ORDINANCE further to amend the Fisheries  
(Conservation and Management)  
Ordinance 1991

Arrangement of sections.		
Section		Page.
1.	Short title, commencement and construction	2.
2.	Amendment of S.2 of principal Ordinance	2.

THE BRITISH INDIAN OCEAN TERRITORY

ORDINANCE NO 2 of 1995

AN ORDINANCE further to amend the Fisheries  
(Conservation and Management)  
Ordinance 1991

Enacted by the Commissioner for the British Indian Ocean Territory.

5 October 1995

D R MacLennan Commissioner

Short title,  
commence-  
ment and  
construction.

1. (1) This Ordinance may be cited as the Fisheries (Conservation and Management) (Amendment) Ordinance 1995 and shall come into force on 1<sup>st</sup> November 1995.

(2) In this Ordinance "the principal Ordinance" means the Fisheries (Conservation and Management) Ordinance 1991.

Amendment  
of S.2 of  
principal  
Ordinance

2. Section 2 of the principal Ordinance is amended by the insertion in the definition therein of "fishing", immediately after paragraph (c) of that definition, of the words "and, for the avoidance of doubt, includes exploring or prospecting for the presence of fish,"

**ANNEX 66**

BIOT Ordinance No. 4 of 1995

THE BRITISH INDIAN OCEAN TERRITORY.  
Ordinance No.4 of 1995.

Arrangement of sections.

Section		Page.
1.	Short title and commencement	2.
2.	Amendment of principal ordinance	2.
3.	S.11 repealed and replaced.	3.

THE BRITISH INDIAN OCEAN TERRITORY  
ORDINANCE No. 4 of 1995

An Ordinance to further to amend the Fisheries (Conservation and Management) Ordinance 1991.

Enacted by the Commissioner for the British Indian Ocean Territory.

7 December 1995  
D R MacLennan  
Commissioner

1. (1) This Ordinance may be cited as the Fisheries (Conservation and Management) (Amendment) (No.2) Ordinance 1995 and shall come into force on 1 January 1996.

(2) In this Ordinance "the principal Ordinance" means the Fisheries (Conservation and Management) Ordinance 1991.

Amend-  
ment of  
principal  
ordinance.

2. Section 10 of the principal Ordinance is amended:

(a) by the insertion in subsection (1) thereof, immediately after the words "with respect to any fishing boat within the fishing waters", of the words "or with respect to any fishing boat that he believes is fishing or has been fishing within the fishing waters";

(b) by the deletion from subsection (1)(i) thereof of the words "to any place in the British Indian Ocean Territory" and the substitution therefor of the words "to such place within the British Indian Territory as he may appoint"; and

(c) by the repeal of subsection (1)(j) thereof and its replacement by the following:

"(j) in the case of any person whom he suspects to have committed an offence against this ordinance, or any regulation made thereunder, in connection with the boat, he may, without summons, warrant or other process, take the suspected offender and take, or require the master of the boat to take, the boat, together with the crew thereof, to such place within the British Indian Ocean Territory as he may appoint; and he shall then bring the suspected offender before a competent court and may, subject to section 11 and to any order that the court may make, detain the suspected offender, the master and crew, and the boat in the British Indian Ocean Territory until the suspected offence has been adjudicated upon;"

S.11

3. Section 11 of the principal ordinance is repealed and replaced by the

repealed  
and  
replaced.

following:

11. (1) Where, in exercise of any of the powers conferred by section 10 or in pursuance of a requirement imposed in the exercise of such a power, a fishing boat is taken to a place within the British Indian Ocean Territory and is then detained, the Director of Fisheries shall, on demand by the master, owner or charterer or by the agent of the owner or charterer, release the boat (together with any equipment, stores and cargo seized with it) if no proceedings in respect of the suspected offence in connection with which that power was exercised have been instituted within 14 days after the arrival of the boat at that Place.

(2) Where anything is seized in the exercise of the powers conferred by paragraph (n), paragraph (n) or paragraph (o) of section 10(1) and the fishing boat concerned (that is to say, the fishing boat from which it was seized, or to which the court is satisfied that it belongs) is not itself taken by a Fisheries Protection Officer or a person authorised by him to a place within the British Indian Ocean Territory in pursuance of section 10(l)(j), then, unless the master of that fishing boat either has, within the specified period, taken his boat to the appointed place within the British Indian Ocean Territory in pursuance of a requirement laid on him under section 10(-<sup>1</sup>)(j) or, if he is not subject to such a requirement, has, within the specified period, otherwise taken his boat to Diego Garcia or to such other place within the British Indian Ocean as a Fisheries Protection officer may appoint and has there reported its arrival to a Fisheries Protection officer, the thing seized may, subject to the following provisions of this section, be ordered by a court to be forfeited to the Crown and shall then be disposed of as the Commissioner may direct.

A court shall not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) Where anything has been seized as referred to in subsection (2) and, within the specified period, the fishing boat concerned has been taken to a place within the British Indian Ocean Territory as specified in that subsection, the Director of Fisheries shall, on demand by the master, owner or charterer of the boat or by the agent of the owner or charterer, release that thing to him if no proceedings in respect of the suspected offence in connection with which the seizure was made has been instituted within 14 days after the arrival of the boat at that place.

(5) In this section " the specified period" means the period of 14 days after the seizure of the thing in question or such longer period as a court may allow in any particular case."

## **ANNEX 67**

*FAO, Fisheries Circular No 898: Structure and Process of the 1993-1995 UN Conference on Straddling and Highly Migratory Fish Stocks and Highly Migratory Fish Stocks (Rome, 1995)*





FAO CORPORATE DOCUMENT REPOSITORY

Produced by: Fisheries and  
Aquaculture DepartmentTitle: Structure and Process of the 1993-1995 United Nations Conference on  
Straddling ...[More details](#)

FAO Fisheries Circular No. 898 FID/C898

## STRUCTURE AND PROCESS OF THE 1993-1995 UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

David J. Doulman

Senior Fishery Planning Officer

FAO Fisheries Department

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

ROME, December 1995

### PREPARATION OF THIS DOCUMENT

This document was prepared to provide information concerning the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The Conference extended from April 1993 until August 1995. The paper summarizes the process of the Conference which led to the adoption of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, at United Nations headquarters in New York, on 4 August 1995.

Doulman, D.J.

Structure and Process of the 1993-1995 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks

FAO Fisheries Circular. No.898. Rome, FAO. 1995. 81p.

### ABSTRACT

This paper reviews the structure and process of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, convened in New York at United Nations headquarters in April 1993 and concluded in December 1995, in accordance with United Nations General Assembly resolution 47/192. The purpose of the Conference was to secure international agreement, consistent with the 1982 United Nations Convention on the Law of the Sea, for the enhanced conservation and management of straddling fish stocks and highly migratory fish stocks. The paper does not attempt a comprehensive analysis of the many complex issues considered by the Conference nor an assessment of the debate. Rather, the paper provides factual information on the proceedings and the outcome of the Conference. By consensus at its sixth session in August 1995, the Conference adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Final Act of the Conference and the Agreement opened for signature on 4 December 1995. On this date 45 States signed the Final Act and 25 States signed the Agreement. It will be open for signature for one year from 4 December 1995. The Agreement will take effect 30 days after the receipt of the thirtieth instrument of ratification or accession.

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## 1. INTRODUCTION

The need to foster rational conservation and management of marine living resources of the high seas has become a matter of considerable international concern. This concern principally stems from the high degree of uncertainty surrounding the exploitation of these resources and the fact that many of them are considered by the Food and Agriculture Organization of the United Nations (FAO) to be fully-exploited if not depleted. This situation has arisen because non-sustainable fishing practices have been used and, in some instances, non-parties to internationally agreed fisheries conservation and management arrangements have operated in management areas and undermined the effectiveness of those arrangements. This has led to resource use conflicts, and the possibility of some States resorting to unilateral measures to try to protect fish stocks that are harvested both within exclusive economic zones (EEZs) and on the high seas.

The 1982 United Nations Convention on the Law of the Sea (1982 Convention) prescribes the rights and obligations of States relating to the exploitation of high seas marine living resources. However, these prescriptions are framed only in general terms. It was thus agreed at the United Nations Conference on Environment and Development (UNCED) that measures were required to more effectively promote the implementation of the 1982 Convention and to ensure that high seas marine living resources were exploited in a rational manner and that fishermen and their respective flag States, operating on the high seas, acted in a responsible and accountable manner.

The 1982 Convention defines EEZ and high seas. Article 55 of this Convention states that the EEZ is "...an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the Coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention." High seas, on the other hand, are defined in Article 86 of the 1982 Convention as being "...the seas that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. ..." It was against the background of these two definitions that discussion and negotiation at the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks centred with respect to the elaboration of more effective conservation and management arrangements for these two types of fish stocks.





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## 2. UNCED BACKGROUND

The non-sustainable use of the world's natural resources and environmental degradation prompted the United Nations General Assembly (UNGA) on 22 December 1989 to adopt resolution 44/228. This resolution called for a global meeting to devise integrated strategies that would halt and reverse the negative impact of human behaviour on the physical environment and promote environmentally long-term sustainable economic development in all countries.

UNCED, the meeting called for in UNGA resolution 44/228, was held in Rio de Janeiro, Brazil, from 3 to 14 June 1992. The Conference, attended by more than 178 heads of government, deputy heads of government, or ranking government ministers committed their respective governments to the 27 principles contained in the Declaration of Rio on Environment and Development (Rio Declaration) and the carefully negotiated text of *Agenda 21: Programme of Action for Sustainable Development* (Agenda 21). The Rio Declaration was endorsed by the UNGA in resolution 47/190 of 22 December 1992.

The Rio Declaration and Agenda 21 were negotiated largely in a preparatory commission, consisting of four sessions between 1990 and 1992, at United Nations headquarters in New York. Most of the text was agreed at the officials level in the preparatory commission, though a number of important issues, and in particular those matters relating to the funding for the implementation of Agenda 21, were addressed, if not resolved, at a political level at the Rio Summit. Although the Rio Declaration and Agenda 21 do not have legally binding effect, both texts, nonetheless, carry a strong moral obligation for States to ensure that they are fully and effectively implemented.

As a means of demonstrating the international resolve to ensure that positive and effective steps were taken to implement the principles contained in the Rio Declaration and the programme of action in Agenda 21, UNCED requested the UNGA to establish a United Nations Commission for Sustainable Development (CSD). The CSD was established at United Nations headquarters in 1992. The Commission consists of representatives of member States of the United Nations and serves as the principle 'watch dog' to monitor progress on the implementation of the Rio Declaration and Agenda 21.

The CSD met for the first time in June 1993. In subsequent years, the CSD will consider chapters of Agenda 21 on a four-year rotating basis. In its resolution 47/190 the UNGA, upon the recommendation of the CSD, decided to convene, not later than 1997, a special session for the purpose of an overall review of the implementation of Agenda 21.

Agenda 21 is a comprehensive action plan with a preamble, four sections and a

total of 40 chapters. It also includes a Statement on Forest Principles. The four sections of Agenda 21 address:

- (i) social and economic dimensions;
- (ii) conservation and management of resources for development;
- (iii) strengthening the role of major groups, and
- (iv) the means of implementation.

Chapter 17 of Agenda 21 deals with "Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources". There are seven programme areas in this chapter. These are:

- (A) integrated management and sustainable development of coastal and marine areas, including exclusive economic zones;
- (B) marine environmental protection;
- (C) sustainable use and conservation of marine living resources of the high seas;
- (D) sustainable use and conservation of marine living resources under national jurisdiction;
- (E) addressing critical uncertainties for the management of the marine environment and climate change;
- (F) strengthening international, including regional, cooperation and coordination, and
- (G) sustainable development of small islands.

Each programme of Chapter 17 is set out in terms of the basis for action, objectives, activities (management-related activities, data and information, and international and regional cooperation and coordination), and the means of implementation (financing and cost evaluation, scientific and technological means, human resource development and capacity building).

Under Programme Area C of Chapter 17 of Agenda 21, States should take effective action to ensure that high seas fisheries are managed in accordance with the 1982 Convention. In part, States are required to:

"(d) Define and identify appropriate management units;

17.50 States should convene, as soon as possible, an intergovernmental conference under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The

conference, drawing, *inter alia*, on scientific and technical studies by FAO, should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means of improving cooperation on fisheries among States, and formulate appropriate recommendations. The work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas. ..."

In terms of the conservation and management activities necessary to achieve this objective, Programme Area C of Agenda 21, recommends that States should cooperate bilaterally and multilaterally, as appropriate, at the subregional, regional and global levels to ensure that high seas fisheries are managed in accordance with the provisions of the 1982 Convention. In particular States should:

- (i) give full effect to the provisions of the 1982 Convention with respect to straddling stocks and highly migratory species;
- (ii) negotiate, as appropriate, international agreements for the effective conservation and management of fish stocks;
- (iii) define and identify appropriate management units, and
- (iv) convene a UN intergovernmental conference focusing on straddling fish stocks and highly migratory fish stocks.

In Programme Area C, States are further called upon to:

- (i) ensure that incidental catches on the high seas are minimized;
- (ii) enact effective monitoring, control and surveillance (MCS) measures to ensure compliance with applicable conservation and management measures, including full, detailed, accurate and timely reporting of catch and effort data;
- (iii) deter reflagging of fishing vessels to avoid compliance with applicable conservation and management measures for high seas fishing activities;
- (iv) prohibit destructive fishing practices;
- (v) fully implement United Nations General Assembly (UNGA) resolution 46/215 on large-scale pelagic driftnet fishing, and
- (vi) take measures to increase the availability of marine living resources as human food.

Because of the size and complexity of the ocean issues, an Administrative Committee on Coordination/Sub-Committee on Oceans and Coastal Areas (ACC/SC) has been established in 1994 by the Inter-Agency Committee on Sustainable Development (IACSD) as Task Manager, *inter alia*, to monitor and review the implementation of Chapter 17. The ACC/SC is chaired by FAO until

1996. IOC/UNESCO provides the secretariat for the ACC/SC.

Depending on their respective mandates, the different United Nations agencies of the ACC/SC have been assigned responsibility as sub-task managers to oversee and report to the CSD on progress with the implementation of Chapter 17 of Agenda21. With respect to fisheries, FAO and the United Nations have been assigned joint responsibility for overseeing the implementation of Programme Area C (marine living resources of the high seas) while FAO, in its own right, has responsibility for Programme Area D (marine living resources under national jurisdiction). Other United Nations agencies, as appropriate, will also work closely with FAO and the United Nations in executing these assigned tasks.





### 3. CONFERENCE MANDATE

The Forty-seventh Session of the UNGA in 1992 addressed the issue of a UN-sponsored intergovernmental conference on straddling fish stocks and highly migratory fish stocks, as called for in Agenda 21. The UNGA decided, *inter alia*:

"... to convene in 1993, under United Nations auspices and in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development, an Intergovernmental Conference on straddling fish stocks and highly migratory fish stocks, which should complete its work before the Forty-ninth Session of the General Assembly; ..."

UNGA resolution 47/192 provided the terms of reference for the Intergovernmental Conference and defined the scope and nature of its work. The Conference was given the primary tasks of:

- (i) identifying and assessing existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks;
- (ii) considering means of improving fisheries cooperation among States, and
- (iii) formulating appropriate recommendations.

The Forty-eighth Session of the UNGA, noting progress made in the first two sessions of the Conference in 1993, agreed to extend the mandate of the Conference for a further year without any alteration to its terms of reference. However, this agreement was not without considerable debate in the UNGA. The debate centred principally on an attempt by States with distant-water fishing interests to remove the reference to 'high seas' in UNGA resolution 47/192. Such a change to the resolution was opposed vigorously by coastal States who maintained that the deletion of 'high seas' would be inconsistent with the spirit and intent of the Rio Declaration and Chapter 17 of Agenda 21. However, more importantly, coastal States viewed this move by distant-water fishing nations (DWFNs) to undermine the national sovereignty and integrity of coastal States within their respective EEZs. Such an erosion of national sovereignty, as enshrined in Part V (Articles 55 to 75) of the 1982 Convention, was not acceptable to these States on any terms.

A further extension of the Conference was granted by the UNGA on the basis of its resolution 49/121. In this resolution, *inter alia*, two further sessions of the Conference in 1995 were agreed, the Conference was urged to complete its work



before the Fiftieth Session of the UNGA, and the Secretary General of the United Nations was requested to provide a final report on the work of the Conference to the UNGA at its Fiftieth Session.





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## 4. CONFERENCE SESSIONS

The Conference had a total of six sessions, one of which was organizational and the remaining five substantive.

In February 1993, prior to the organizational session of the Conference, Canada took the initiative to organize in St. Johns Newfoundland, a meeting of coastal States to consider issues relevant to the Conference. The purpose of the meeting was essentially to foster solidarity among coastal States and to raise the level of consciousness on issues germane to UNGA resolution 47/192.

In this pre-Conference meeting, coastal States were encouraged to review a range of issues of common concern relating to straddling fish stocks and highly migratory fish stocks, to exchange information and ideas concerning likely negotiating positions and scenarios in the Conference, together with possible Conference outcomes. Canada prepared documents for the meeting and also made available a range of other papers for participating States.

### 4.1 Organizational session (19-23 April 1993)

In line with UNGA resolution 47/192, the Division for Ocean Affairs and Law of the Sea (DOALOS) of the UN Office of Legal Affairs, was assigned the responsibility of providing the Secretariat to the Conference. In turn, DOALOS set in train arrangements for an organizational session in April 1993.

At this session Ambassador Satya Nandan of Fiji was elected Chairman of the Conference. Widely acclaimed internationally as a jurist and Law of the Sea Expert, Ambassador Nandan had previously been closely involved in the negotiation of the 1982 Convention, *inter alia*, acting as rapporteur of the Second Committee of the 1973-82 United Nations Conference on the Law of the Sea (UNCLOS) and chairing its Negotiating Group on item 4. He subsequently served as Special Representative of the Secretary-General for the Law of the Sea from 16 January 1984 to 29 February 1992.

The Conference also elected, by acclamation, three vice-chairmen from Mauritania (African States), Italy (Western European and other States) and Chile (Latin American and Caribbean States). It was agreed that consideration of the appointment of a fourth vice-chairman should be deferred until the second session.

Rules of procedure were adopted, and the organization of work for the second session of the Conference was agreed. In addition, a credentials committee consisting of Antigua and Barbuda, Argentina, Burundi, China, Kenya, New Zealand, Papua New Guinea, Russian Federation, and USA, was appointed. The rules of procedure required that the credentials committee meet at each session of

the Conference and duly report to the Conference prior to the conclusion of each session. At each session, under the chairmanship of Argentina, the credentials committee met and reported, as required by the rules of procedure.

Attendance at the organizational session was strong, and in addition to UN Member States and IGOs, a large number of NGOs were represented. A significant part of the session was taken up with debate relating to the role of the European Economic Community (EEC) in the Conference. However, it was finally agreed that:

"The representative of the European Economic Community shall participate in the Conference in matters within its competence without the right to vote. Such representation shall in no case entail an increase of the representation to which the member States of the European Economic Community would otherwise be entitled."

With respect to the organization of work of the Conference, it was agreed in the first session, on the basis of recommendations from the Chairman, that all substantive issues would be considered in plenary, though it was recognized that *ad hoc* working or negotiating groups would need to be established to consider specific issues. At this session, the Chairman sought assistance from participants in elaborating the substantive issues to be considered by the Conference. In particular, the Chairman requested participants to provide him with a listing of issues that should be addressed. In the inter-sessional period prior to the second session a large number of submissions were received by the Chairman. These submissions were distributed by the Secretariat for the information of the Conference participants.

In recognition of FAO's mandate for fisheries matters within the UN system, and in accordance with paragraph 11 of UNGA resolution 47/192, an FAO staff member joined the Conference Secretariat as Scientific and Technical Adviser.

At the organizational session, FAO indicated that it would make available a number of technical documents for the second session, including the report and documents of the 1992 FAO Technical Consultation on High Seas Fishing; the Declaration of Cancún adopted by the 1992 International Conference on Responsible Fishing in Cancún, Mexico; the Strategy for Fisheries Management and Development adopted by the 1984 World Conference for Fisheries Management and Development; the draft Code of Conduct for Responsible Fisheries, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), at that time available in draft form.

At the conclusion of the organizational session, FAO was requested by the Group of South Pacific States to provide a paper for the second session of the Conference. The South Pacific States pointed out that FAO had done much valuable work in technical assessments on key fisheries issues and requested that an updated report summarising the characteristics of the main high seas fisheries, covering details of current stock status, characteristics of the fleets operating in the fisheries and recent trends in catch and effort, be provided as a document of the Conference.

#### **4.2 Second session (12-30 July 1993)**

In his opening statement at this session, the Chairman reminded the Conference that many of the world's fish stocks were not being harvested in a sustainable manner and that this situation, if allowed to continue, could threaten the long-term supply of this important source of food and adversely affect the fishing industry. He also noted that there was a need to secure an internationally agreed solution if the conservation and management of high seas fisheries resources was to be successful. The Chairman underscored the importance of technical work being initiated by FAO with respect to high seas conservation and management but pointed out that such work required reinforcing by the Conference through the clear definition of a legal and political framework.

At the beginning of the second session States, IGOs (including regional fishery bodies) and NGOs were invited to make general statements, but focusing specifically on matters to be addressed by the Conference. These statements permitted participants to outline their national and organizational positions on the conservation and management of straddling fish stocks and highly migratory fish stocks. Depending on their respective interests in high seas fishing and the degree of interaction with high seas fisheries, the positions of States fell clearly into two groups: coastal States and DWFNs.

On 12, 13 and 14 July 1993 general statements were made by Australia, EC, Peru, Chile, China, Russian Federation, Canada, New Zealand, Norway, USA, Korea, Japan, Argentina, Solomon Islands (on behalf of the 16 member States of the South Pacific Forum Fisheries Agency (FFA)), Fiji, Poland, UK (on behalf of its territories in the Caribbean and the Southern Atlantic), Brazil, Sweden, Sri Lanka, Mexico, Ukraine, Tanzania, Sierra Leone, Colombia, Cook Islands, Trinidad and Tobago (on behalf of the 12 member States of the Caribbean Community (CARICOM)), Indonesia, Philippines, Ecuador, India, Iceland, Costa Rica, Latvia, Cuba and Kiribati. In addition, the following IGOs and NGOs made statements: FAO, IOC-Unesco, FFA, Inter-American Tropical Tuna Commission (IATTC), Greenpeace International, World Wide Fund for Nature (WWF) UK (on behalf of the National Audubon Society and the Council for Oceans Law of the USA), Alaska Marine Conservation Council, Oceans Institute of Canada, Fogo Island Fish Cooperative, and the Four Directions Council.

At the conclusion of the general statements, and on the basis of written submissions provided by some States, the Chairman identified those key issues before the Conference where there was some measure of agreement. The issues identified by the Chairman included the following:

- (i) the 1982 Convention to be the framework within which conservation and management measures for the two types of stocks would be developed;
- (ii) a clear need for conservation and management of straddling fish stocks and highly migratory fish stocks and that such conservation and management should be compatible over stock ranges;
- (iii) international cooperation is required for effective conservation and management;
- (iv) a need for an international code of conduct for international fishing;

(v) effective flag-State enforcement to be exercised on the high seas in respect of the two types of stocks;

(vi) data and information are essential for the development of conservation and management measures and that in the absence of such data a precautionary approach to management should be invoked;

(vii) regional conservation and management practice should be based on globally agreed principles to ensure uniformity and consistency;

(viii) the principle of resource sustainability is an essential component of conservation and management;

(ix) proper monitoring, control and surveillance (MCS) is necessary for effective conservation and management;

(x) effective conservation and management to be underpinned by proper dispute settlement mechanisms;

(xi) conservation and management measures not to be undermined by the activities of States not party to regional management arrangements and new entrants to fisheries need to be accommodated inasmuch as this is possible, and

(xii) technical cooperation to be extended to developing countries to enhance their capabilities in fisheries conservation and management.

After providing this summary, the Chairman pointed out that the Conference had discharged the first component of its mandate in that existing problems relating to straddling fish stocks and highly migratory fish stocks had been identified and their relative importance assessed.

Having made this assessment, the Conference commenced to consider in greater detail the issues before it. This was done on the basis of a comprehensive and well-structured guide to the issues prepared by the Chairman.

The guide to the issues was presented in two sections: (i) the purpose of the Conference, and (ii) issues to be addressed by the Conference. The latter section included:

(i) the nature of conservation and management measures to be established through cooperation;

(ii) the mechanisms for cooperation;

(iii) the responsibilities of regional fisheries organizations or arrangements;

(iv) compliance with conservation and management measures;

(v) enforcement of high seas fisheries;

- (vi) conservation and management measures;
- (vii) non-parties to a regional agreement or arrangement;
- (viii) the settlement of disputes on matters of a technical nature, and
- (ix) compatibility and coherence between national and international conservation measures for the same stock.

The importance and practical benefit of the Chairman's paper on the issues before the Conference was that it sharply focused discussion on the range of complex and difficult issues under consideration, facilitating forward movement in debate and negotiation. In a structured and methodical way participants were invited to outline their respective positions on the various issues. Some of the issues were considered in informal sessions as a means of giving States maximum flexibility in discussion and debate.

As the basis for a negotiating strategy the Chairman sought initially to develop points of agreement and preliminary text on relatively non-controversial technical straight-forward issues such as data and information requirements for effective conservation and management. With some technical points and text virtually agreed, the informal sessions then progressed to consider more difficult matters such as the question of compatibility in conservation and management between EEZs and the high seas. On issues such as these, no clear consensus existed between coastal States and DWFNs.

Drawing on national positions outlined by States both in plenary and in informal sessions, and taking account of other information (e.g., statements of NGOs and subregional or regional fishery organizations) before the Conference, the Chairman elaborated the first draft of a negotiating text. The text paralleled closely the issues identified by the Chairman in his discussion paper. After the introduction, the negotiating text addressed:

- (i) the nature of conservation measures to be established through cooperation;
- (ii) mechanisms for international cooperation;
- (iii) regional fisheries management organizations or arrangements;
- (iv) flag State responsibilities;
- (v) compliance and enforcement of high seas fisheries conservation and management measures (compliance and enforcement by flag States and regional arrangements for compliance and enforcement);
- (vi) port States;
- (vii) non-parties to a subregional or regional agreement or arrangement;
- (viii) dispute settlement;

- (ix) compatibility and coherence between national and international conservation measures for the same stock;
- (x) special requirements of developing countries, and
- (xi) review of the implementation of conservation and management measures.

After the Chairman tabled his negotiating text, the Conference moved to consider it in depth, and as a consequence of having text with which to work, discussion became even tighter and more focused than it had been previously. It was essentially at this point in the Conference that serious negotiations among States commenced, as opposed to national posturing and the delivery of general statement and the reiteration of national positions.

While the form of the outcome of the Conference had not been considered previously in detail, it was evident from discussion on this matter that there were markedly differing positions among States. Some States, and most notably coastal States, expressed the view that the conservation and management of high seas resources could not be guaranteed, nor would conservation and management be effective, in the absence of a legally binding instrument to govern the exploitation of straddling fish stocks and highly migratory fish stocks.

Indeed, early in this session a group of 'like-minded States' sponsored a paper, drafted in convention format, for consideration by the Conference. However, some coastal States and DWFN delegations expressed the view that the tabling of the document was premature, and even ill-timed, because all the issues before the Conference had not been considered in sufficient depth. For this reason, this draft convention failed to gain the attention it probably deserved, nor to have a significant and sustained impact on the Conference's deliberations.

On the question of form, other States, and especially those with distant-water fishing interests (e.g., China, EC, Japan, Korea and Poland) indicated that a declaration on conservation and management or UNGA resolution, for example, would be a more appropriate form of the outcome of the Conference.

At the end of the second session the Chairman submitted that substantial progress had been made in fulfilling the mandate set out in UNGA resolution 47/192. He summarized briefly the status of the issues that had been discussed during the session, and proposed that the Conference agree that:

- (i) there should be two further sessions during 1994 with dates to be confirmed by the UNGA at its forty-eighth session;
- (ii) facilities be made available to permit two simultaneous meetings during the session, and
- (iii) FAO be requested to provide two information papers on the precautionary approach to fisheries management and reference points for fisheries management, in advance of the third session.

These three proposals were endorsed by the Conference.

Closing statements on 30 July 1993 were made by Solomon Islands (on behalf of the 16 member States of the FFA), Peru, Colombia, Russian Federation, Japan, Argentina, UK (in response to a query by Argentina concerning the composition of the UK delegation), Korea, Canada, Norway, New Zealand, Australia, EC (on behalf of its 12 member States), Trinidad and Tobago (on behalf of the 12 member States of CARICOM), China, Iceland, South Pacific Permanent Commission (CPPS), Fiji, Women's Fisheries Network, Fishermens' Food and Allied Workers of Canada, and the Japan Federation of Tuna.

At its Forty-eighth Session in 1993, the UNGA received a progress report on the Conference. Following considerable and substantial debate, the UNGA resolved that the three proposals endorsed by the Conference at its second session be accepted and requested the United Nations Secretary-General to report again on progress at the Conference at the Forty-ninth Session of the UNGA in 1994.

#### **4.3 Third session (14-31 March 1994)**

At the third session of the Conference, the Chairman in his opening statement again emphasized the need for the Conference to achieve international cooperation for the effective conservation and management of straddling fish stocks and highly migratory fish stocks. He also informed the Conference, *inter alia*, that FAO's Compliance Agreement was open for signature, that FAO had convened an *Ad hoc* Consultation on the Role of Regional Fishery Agencies in Relation to High Seas Fishery Statistics (*Ad hoc* Consultation), and that work was progressing in FAO on the development of the Code of Conduct for Responsible Fisheries. The Chairman pointed out that all of these initiatives were relevant to the work of the Conference.

On 14 March 1994 opening statements were made by EC, Peru, Canada, Korea, Argentina, Japan, China, USA, Samoa (on behalf of the 16 member States of the FFA), Ecuador, Russian Federation, New Zealand, Poland, Australia, FAO, Greenpeace International, and the International Commission for the Conservation of Atlantic Tunas (ICCAT).

It was agreed by the Conference that the work of the third session would commence with general remarks by States, IGOs and NGOs and be followed, in informal sessions, by a section-by-section examination of the Chairman's negotiating text. The form of the outcome of the Conference would then be considered and a revised negotiating text would be issued by the Chairman. Concurrent with the plenary or informal sessions, it was further agreed that two working groups would be convened to consider the two critical issues of the precautionary approach to fisheries management, and reference points for fisheries management. Discussion would start from, and be based on, the two documents prepared for the Conference by FAO, as called for in UNGA resolution 48/194.

The informal sessions prompted intense discussion and negotiation and provided ample scope for the Chairman to refine substantially his negotiating text. While retaining the essential elements, features and structure of the initial negotiating text, the revised Chairman's text was more comprehensive and sophisticated in the treatment of the issues being considered by the Conference.

In its revised form the Chairman's negotiating text contained a preambular section, and articles relating to:



- (i) objective;
- (ii) application;
- (iii) general principles (the nature of conservation and management measures, precautionary approaches to fisheries management, and compatibility);
- (iv) international cooperation (mechanisms for international cooperation and regional fisheries management organizations or arrangements);
- (v) compliance with an enforcement of high seas fisheries conservation and management measures (duties of the flag State, compliance and enforcement of the flag State, and regional agreements and arrangements for compliance and enforcement);
- (vi) port States;
- (vii) non-participants in subregional or regional organizations or arrangements;
- (viii) dispute settlement;
- (ix) special requirements of developing States, and
- (x) review of the implementation of conservation and management measures.

The revised Chairman's negotiating text also contained three annexes dealing with:

- (i) minimum standards for data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks;
- (ii) suggested guidelines for applying precautionary reference points in managing straddling fish stocks and highly migratory fish stocks, and
- (iii) arbitration.

On 28 March 1994 prior to the conclusion of the third session Ecuador tabled a working paper in the form of a draft convention. Although referred to in subsequent sessions by some Latin American delegations, the draft convention appeared to have little impact on deliberations in the Conference.

In his statement at the close of the third session of the Conference the Chairman indicated that considerable progress had been made towards securing agreement on key issues. He noted that such progress had been made on the important and fundamental issues of the:

- (i) coherence in the conservation and management of straddling fish stocks and highly migratory fish stocks in areas of national jurisdiction and in the high seas;

- (ii) general principles on which conservation and management should be based;
- (iii) international cooperation, including regional and subregional cooperation, for achieving the goal of effective conservation and management, and sustainable resource use;
- (iv) compliance with, and the enforcement of, high seas fisheries conservation and management measures, in particular the duties of the flag State in this regard;
- (v) role of port States in support of effective conservation and management;
- (vi) cooperation required to deal with States that do not participate in the work of regional fisheries bodies or arrangements;
- (vii) special requirements of developing countries to enhance their national capacities to more effectively participate in fisheries conservation and management;
- (viii) need for compulsory settlement of disputes in support of effective fisheries conservation and management, and
- (ix) procedures for the review of the implementation of conservation and management measures adopted by the conference.

In keeping with established UN practice, the Chairman indicated in the third session that he sought consensus on all major decisions taken by the Conference. The inclusion of compulsory settlement provisions and a review process in the Chairman's negotiating text were seen as important measures designed to strengthen the effectiveness with which straddling fish stocks and highly migratory fish stocks would be conserved and managed.

On 31 March 1994, closing statements were made by EC, New Zealand, Ecuador, Peru, Japan, Russian Federation, Tunisia, Samoa (on behalf of the 16 member States of the FFA), Canada, Norway, Argentina, USA, Korea, Trinidad and Tobago (on behalf of the 12 member States of CARICOM), China, Australia, Poland, Chile, Mauritania, Sierra Leone, OLDEPESCA, CPPS and Greenpeace International.

#### **4.4 Fourth session (15-26 August 1994)**

Between the third and fourth session of the Conference an intersessional meeting was hosted in June 1994 by Argentina with the participation of both DWFNs and coastal States: Argentina, Canada, Chile, EC, Iceland, Japan, New Zealand, Norway, Papua New Guinea, Peru, Russian Federation, Sweden and the United States. The FFA also attended. The Chairman's revised negotiating text was the focus of discussion in the meeting, with an emphasis on how to narrow differences on important outstanding issues before the Conference.

The fourth session of the Conference was devoted almost entirely to negotiation. Few new proposals were put forward for consideration, though some States and groups of States sought, through negotiation, to modify substantially particular

parts of the Chairman's revised negotiating text.

The Chairman opened the session with a statement reminding the Conference that lack of order and regulation, inappropriate economic policies, and insufficient cooperation between States on fisheries matters had led to a failure of States to properly manage fisheries resources. He continued that voluntary systems of fisheries conservation and management had been ineffective, and that industry subsidization and massive fleet over-capacity were characteristic of the fishing industry. The Chairman pointed out that the right to fish, whether it be in an EEZ or on the high seas, was a conditional right in that the right was accompanied by a duty to conserve and manage resources for both current and future generations.

The Chairman then addressed the issue of the outcome of the Conference and outlined the six key elements that any outcome must contain in order to meet international expectations with respect to effective fisheries conservation and management. These elements were that the outcome of the Conference must:

- (i) establish minimum international standards in sufficient detail for the conservation and management of fish resources;
- (ii) ensure that the measures taken for conservation and management in the EEZs and in the adjacent high seas areas are compatible and coherent, in order to take into account the biological unity of the stocks and the supporting ecosystem;
- (iii) ensure that there is effective mechanisms for compliance and enforcement of those measures;
- (iv) provide for a globally agreed framework for regional cooperation in the field of fisheries conservation and management, consistent with the situation prevailing in each region, as is envisaged by the 1982 Convention, and
- (v) provide for a compulsory binding dispute settlement mechanism, consistent with the 1982 Convention, while providing the necessary flexibility to the parties to a dispute to use the mechanism of their choice.

On 15 August 1994 general statements were made by Canada, Norway, USA, EC, Japan, Korea, Australia, Argentina, UK (on behalf of its territories), Poland, Peru, India, China, Iceland, Sweden, Uruguay, FAO, Alaska Marine Conservation Council, WWF UK, and Greenpeace International.

The Conference endorsed the work programme proposed by the Chairman and the Bureau for the session. In their general comments most States, IGOs and NGOs did not refer specifically to the Chairman's revised negotiating text, but rather to broader issues of concern. Several States expressed support for a legally binding agreement as the outcome of the Conference, while other States sought an outcome that would not be legally binding. Several other States pointed to the need to resolve the issue of form at the fourth session.

Following these remarks, the Conference moved to review the Chairman's negotiating text section-by-section. Many former arguments and positions on issues

were restated, but the Chairman and many delegations believed that the debate had led to a further clarification of issues and had permitted the Conference to find new common ground on some issues, including the issue of compatibility. In addition to plenary, the Chairman also convened small informal groups of interested parties to consider issues that could be better dealt with in this way. Discussion in these groups was intensive and tightly focused. These groups contributed significantly to the Chairman's search for neutral language and concepts for the revision of his text.

At the conclusion of the review of the revised negotiating text, the Chairman issued his draft agreement, based on the Chairman's revised negotiating text. The Chairman's draft agreement had a total of 48 articles, consisting of a preamble, 13 parts and two annexes.

Many States expressed support for the content and structure of the Chairman's draft Agreement though the States with high seas fishing interests continued to oppose such a draft Agreement, arguing that the question of form had not yet been decided by the Conference. Nonetheless, and despite objections to the form of the document, in an initial review of the Chairman's draft agreement, States with high seas fishing interests indicated that it was generally a more balanced document than the previous text. However, most coastal States complained that the Chairman's draft Agreement had softened language and concepts too much, tilting the text in favour of the DWFNs. Coastal States indicated that this matter would need to be addressed in the next session of the Conference.

With respect to the role of regional fishery organizations in high seas fisheries conservation and management, there was further debate in plenary about whether minimum standards should be specified by the Conference or whether only guidelines should be provided, leaving decisions as to the actual measures to be adopted by the subregional or regional organizations or arrangements themselves. The latter approach, favoured by States with high seas fishing interests, was not supported by coastal States which maintained that effective conservation and management could not be achieved unless minimum international standards were specified for, and adopted by, all subregional or regional organizations or arrangements.

In his statement at the close of the fourth session, the Chairman with the concurrence of the Bureau, again noted that excellent progress had been made in moving closer to agreement on the outstanding issues before the Conference, but that a further two sessions would be required in 1995 to enable the Conference to discharge fully its terms of reference. The Conference accepted this proposal as the basis for a recommendation for the 1994 Forty-ninth Session of the UNGA.

Having accepted this recommendation for a further two sessions, the Chairman made a plea that no attempt be made at the Forty-ninth Session of the UNGA to re-open debate concerning the terms of reference for the Conference, as these had been negotiated in UNGA resolution 47/192. The Chairman noted that such attempts could hinder the good progress being made in the Conference and, ultimately, be prejudicial to its outcome. In making this plea, the Chairman was clearly seeking the cooperation of all parties to avoid the type of debate that took place at the Forth-eighth Session of the UNGA.

The Chairman also advised the Conference that it was his understanding that there was a widespread and substantial view that a binding outcome was essential. He

added that he saw the Chairman's draft agreement as a turning point in the Conference since substance and form has been brought together for the first time. For his part the Chairman undertook to consult widely with States and groups of States in the intersessional period as a means of facilitating progress in the next session of the Conference.

Closing statements on 26 August 1994 were made by Indonesia, Sweden, USA, Russian Federation, Ukraine, Japan, New Zealand, Canada and Greenpeace International. Contrary to the Chairman's assessment in his closing statement, some delegations regarded the close of the fourth session as being a low point in the Conference. This was because little substantive progress had appeared to have been made on several important issues and it was clear that time was running out for the Conference to complete its work.

#### **4.5 Fifth session (27 March - 12 April 1995)**

In his opening statement the Chairman outlined the work of the fifth session based on the consensus reached at the close of the fourth session and the directives from the UNGA in its resolution 49/121. Following general statements by States, IGOs and NGOs on the text as a whole, it was proposed that the text should be examined in detail in informal meetings of the plenary. The Chairman indicated that this method of proceeding would enable text to be revised, and further examined so that outstanding issues could be identified.

In his opening statement the Chairman also made note of two sets of intersessional discussions that had taken place since the fourth session; a meeting of DWFN States, convened by Japan, in Tokyo in January 1995, and a meeting of 25 coastal States, convened by the 'like-minded States' in Geneva in February 1995. At both meetings the Chairman's draft Agreement, which was issued at the end of the fourth session, was reviewed and issues clarified, though no conclusions were reached.

At these intersessional meetings proposals had been made for textual changes as a means of enhancing the scope and content of the draft Agreement. The Chairman stressed that the intersessional discussions had been most helpful for the Conference process but that they did not, in any way, pre-empt discussions and negotiations in the Conference proper. He added that the matters which generated most discussion and debate at the intersessional meetings were the issues of compatibility of conservation and management measures in areas under national jurisdiction and in high seas areas; new participants in subregional or regional fisheries organizations or arrangements; enforcement of conservation and management measures in high seas areas by non-flag States, and the desirability of using the provisions of the 1982 Convention with respect to the settlement of disputes.

The Chairman also summarized the state of world fisheries, drawing extensively on a recent FAO publication. Without mentioning the States involved, he referred to the international dispute between Canada and Spain in the Western Atlantic Ocean and indicated that such disputes underscored the need for international fisheries cooperation and for the Conference to secure a lasting instrument for the conservation and management of straddling fish stocks and highly migratory fish stocks.

In the opening session on 27 March 1995 statements were made by Canada, EC, USA, Chile, Peru, Australia (on behalf of the 16 member States of the FFA), Thailand, China, Brazil, Japan, Korea, Poland, Iceland, Norway, Argentina, Russian Federation, Ukraine, Bangladesh, Mexico, Ecuador, Morocco, OLDESPESCA and Greenpeace International.

Significantly, the form of the outcome of the Conference was more or less confirmed in the opening session, a matter that had been previously held in abeyance and subject to controversy. In this connexion, the EC noted that "...there is a clear momentum towards a binding international instrument. On this question the EC has stated that it would be flexible.", while Japan indicated that it would acquiesce in favour of a binding arrangement even though its preference was for a non-binding outcome. These two statements were most helpful to progress at the session in that they deflected further discussion on this matter.

The session was largely taken up with intense discussion and negotiation. The session opened with a review of the Chairman's draft Agreement. This review enabled the Chairman to incorporate proposals and suggestions made by States, IGOs and NGOs.

During this initial review of the draft Agreement there was also considerable discussion as to whether the annexes to the draft Agreement should have the same standing as the body of the document. Some delegations argued that the annexes should not be binding and therefore should have a different legal status. However, other delegations led principally by the USA argued most strongly that the annexes must be mandatory if the agreement was to have "real teeth". It was agreed, finally, that the annexes would be an integral component of the Agreement, but that Annex 3, dealing with the settlement of disputes, be eliminated from the draft Agreement in favour of using the dispute settlement provisions of the 1982 Convention.

With respect to Annex 1 of the draft Agreement concerning data requirements for high seas fisheries, FAO submitted a paper to the session reporting on the deliberations of the Coordinating Working Party on Fishery Statistics (CWP). In this document, the CWP recognized the importance of stipulating the minimum data requirements for high seas fisheries and stressed that the requirements in Annex 1 should be considered minimum standards for stock assessment and fishery management. This strong and unambiguous support from the world's major fishery bodies indicated clearly the need for the specification of minimum standards for high seas fisheries in the draft Agreement.

Following the initial reading of the draft Agreement, a second review of the text was undertaken by the Conference. This second review enabled a number of outstanding issues to be further clarified, and areas of primary disagreement to be underscored and delineated. Although some delegations continued to have conceptual and textual difficulties with a range of articles in the draft Agreement, it became increasingly evident that there were two primary areas of disagreement: Articles 14 and 21.

Article 14 deals with areas of high seas surrounded entirely by areas under the national jurisdiction of a single State. This issue has been pursued strongly throughout the Conference by the Russian Federation, and in a written submission the Federation further highlighted the fisheries problems in the Sea of Okhotsk. At

the end of the fifth session, there was considerable agreement on the revised text for Article 14, but with opposition primarily from two DWFNs - Korea and Poland.

During the session, the Chairman convened a number of informal meetings to discuss Article 21 of the draft Agreement concerning regional agreements or arrangements for compliance and enforcement. It was this Article, which many delegations identified early in the fourth session as being the heart of the Agreement, that presented most difficulty for DWFNs.

The difficulty for DWFNs was the issue of whether non-flag States could apprehend vessels fishing on the high seas, which had undermined, or which were believed to have undermined, internationally agreed conservation and management measures for straddling fish stocks and highly migratory fish stocks. On this point coastal States took the position that the provisions of the 1982 Convention required further elaboration and strengthening, and that the Conference should address this matter directly. DWFNs, on the other hand, argued that it would be contrary to international law to permit the arrest and detention of vessels on the high seas by a non-flag State.

In his closing statement, the Chairman noted that progress had been made in the fifth session. He pointed out that it had been possible to review two versions of the Chairman's draft Agreement prior to issuing the Chairman's revised draft Agreement. The Chairman reminded the Conference that it was mandated to seek means for promoting the effective implementation of the provisions of the 1992 Convention with respect to straddling fish stocks and highly migratory fish stocks. In so doing, the Conference was required to identify and assess problems relating to conservation and management for these stocks and to consider means of improving international fisheries cooperation and the formulation of appropriate recommendations for management.

With respect to the Chairman's draft revised Agreement, the Chairman further noted that he believed that the text balanced the interests of coastal States and DWFNs. He added that the collective interest of the international community must be taken into account if sustainable use of high seas resources was to be secured. The Chairman pointed out that the text, as it stood, created three essential pillars: (i) it provided the principles and practices on which enhanced stock management should be based; (ii) it ensured that conservation and management measures adopted for high seas fisheries would be adhered to and complied with and that they would not be undermined by those engaged in high seas fishing; and (iii) it provided for the peaceful settlement of disputes, in accordance with the relevant provisions of the 1982 Convention.

In conclusion, the Chairman urged all participants to study the Chairman's draft revised Agreement with an open mind and not to lose track of the importance of achieving long-term sustainable use of high seas fisheries resources. Noting that the sixth session of the Conference would be its last, the Chairman stated that he looked forward to the cooperation of all delegations in finalizing the Agreement at that session.

The fifth session was a very productive one in that all delegations negotiated flexibly and in a spirit of understanding. At the conclusion of the session, the Chairman indicated, and all delegations agreed, that the next session of the

Conference scheduled for July/August 1995, must be the last session. While adjustments needed to be made to the text to ensure conformity in all languages, the only articles that remain substantially outstanding were Articles 14 and 21. These articles will be informally addressed by the Chairman and delegations during the intersessional period and they will be considered formally at the commencement of the next session. When agreement is secured on wording for the articles, the focus of the Conference will move to authentication and standardization, etc., of the texts in the official languages. It is still envisaged that the agreement will be open for signature at the end of the next session.

Concluding statements were made on 12 April 1995 by Brazil, Peru, Estonia, Norway, Chile, USA, the EC, Japan, Indonesia, China, Australia (on behalf of the 16 member States of the FFA), Argentina, Poland, Russian Federation, Uruguay, Korea, Canada, Iceland, Senegal, Morocco, Sri Lanka, Mexico, Greenpeace International, and WWF UK.

At the conclusion of the fifth session the Chairman re-issued his draft Agreement.

#### **4.6 Sixth session (24 July - 4 August 1995; resumed 4 December 1995)**

In his opening statement, the Chairman stressed the need for a consensus outcome at the Conference, and he urged all States to show flexibility in their negotiations. He noted that the work of the Conference must be concluded at this session.

In keeping with past practice the Chairman reported on two intersessional meetings that had been held since the fifth session. The first of these meetings had been convened by the United States in Washington DC in June 1995. Key DWFNs and coastal States participated in this meeting: Argentina, Canada, EC, Japan, Korea and New Zealand. The Washington DC meeting led to the drafting of a non-paper by the United States on Article 21. This non-paper became a centrepiece for discussion in the sixth session in the Chairman's efforts to secure agreement in the Conference on this Article. The second meeting was convened in New York by the Chairman immediately prior to the opening of the session. Both of these intersessional meetings focused on Article 21 of the Chairman's Draft Agreement. This Article, which was subsequently split into two Articles in the final Agreement (Articles 21 and 22), concerned regional agreements and arrangements for compliance and enforcement.

Article 21 of the Chairman's Draft Agreement had been identified previously as being the most controversial and difficult Article in the text. This was because this Article effectively involved an extension of international law in that authorized personnel from one State, within the framework of subregional or regional organizations or arrangements, could board and inspect vessels, fishing on the high seas, from another State. This issue was extremely sensitive in terms of the legal principles involved since DWFNs viewed such a provision as an erosion of flag State control; a principle clearly enshrined in the 1982 Convention.

The work of the sixth session opened with an article-by-article review of the text of the Chairman's Draft Agreement. In the intersessional period the Secretariat had studied the text and had proposed drafting changes to make it internally consistent and to bring the text in line with the 1982 Convention. This revised text of the Chairman's Draft Agreement was issued as a conference room paper and formed



the basis of the initial review of articles.

Following opening statements on 24 July 1995 by States, IGOs and NGOs that included Canada, Poland, Samoa (on behalf of the 16 member States of the Forum Fisheries Agency), EC, USA, Norway, China, Japan, Korea, Peru, Argentina, Malaysia, Ukraine, Brazil, Philippines, Sri Lanka, Russian Federation, Uruguay, CPPS, Greenpeace International and the Offshore Fishworkers' of Chile, Peru, Argentina and Ecuador, the Conference met in informal sessions to consider the Chairman's Draft Agreement. In general there was a reluctance to alter the text significantly as most delegations, and in particular those States that had been represented at all sessions of the Conference, recognized the delicate and sensitive balance that had been struck in negotiations in previous sessions.

Most negotiating time in the sixth session was taken up with Articles 14, 21 and the final provisions of the Agreement.

Article 14 (which became Article 16 in the final Agreement) concerned areas of the high seas surrounded entirely by an area under national jurisdiction of a single State. This Article had been problematic in previous sessions and primarily focused on the fisheries situation with respect to pollock stocks in the Sea of Okhotsk.

The text for Article 14, as considered by the Session, was based on text proposed by Canada, Norway, Peru, Russian Federation, and the United States at the fifth previous session and, as such, essentially reflected a coastal State position. It would seem that the United States was associated with this proposal because it did not want to witness the collapse of the fishery in the Sea of Okhotsk, as had been the case with the valuable fishery in the Bering Sea.

In the debate on Article 14 the Russian Federation argued that the fisheries conservation and management measures adopted for straddling fish stocks by the coastal State in its EEZ must be respected when conservation and management measures for the high seas enclave were being drawn up and implemented. Poland on the other hand, with the support of Korea and China, all of which have important fisheries in the Sea of Okhotsk, sought to minimize any restrictions that might be imposed on fishing activities in the high seas enclave. Intensive negotiations between the Russian Federation and Poland lasted on this issue right up until the final meeting of the session, when text was agreed.

The renegotiation of Article 21, and subsequently Article 22, was the main substantive issue of debate at the sixth session. While the two intersessional meetings in Washington DC and New York had refined the Chairman's draft text on these articles, and had led to a convergence of positions between coastal States and DWFNs, there remained several matters in this article that required substantial negotiation. These matters included:

- (i) the boarding and inspection of vessels within the context of subregional or regional organizations or arrangements;
- (ii) clarification of the roles of, and procedures for, the flag State and the inspecting State in cases where vessels are boarded and violations have, or have not been committed;
- (iii) detention of crew;

(iv) the listing of serious violations (e.g., fishing without a licence, failing to maintain accurate records of catch and catch-related data, fishing in a closed area, using prohibited fishing gear etc.), as opposed to providing a definition of a serious violation;

(v) application of the proportionality principle when action is taken by a non-flag State against a vessel that has operated contrary to subregional or regional conservation and management arrangements, and

(vi) the liability for damage or loss arising from enforcement action taken in accordance with Article 21.

For clarity, the Conference opted to include in the new Article 22, basic procedures for boarding and inspection pursuant to Article 21. The purpose of including these procedures in the Article was to provide guidance for boarding and inspection and to try to ensure that abuses did not result.

With respect to the final provisions of the Agreement (Part XIII), there was considerable negotiation, albeit in a small group, concerning the provisions relating to the EC. A change in the EC situation vis-a-vis its competence in fisheries matters since the adoption of the 1982 Convention meant that Annex IX of the 1982 Convention relating to the participation by international organizations, could not be simply cross referenced in the Agreement. Rather in Article 47 (Participation by International Organizations) of the Agreement, the application of Annex IX of the 1982 Convention is qualified with respect to the application of the Agreement.

During the sixth session the Chairman issued two revisions of the draft Agreement, as Conference Room Papers, prior to the adoption of the Agreement. In addition, there were several versions of Articles 16, 21 and 22 and the final provisions circulated by the Chairman. Indeed, the Chairman's capacity to work so decisively and speedily under tight time and administrative pressures was noted by almost all delegations in their closing statements.

On 4 August 1995 the Conference adopted, by consensus, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

The Conference also adopted, at the same time, the Final Act of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The Final Act, given in Annex 2, provides a factual summary of the Conference and contains two resolutions concerning the Early and Effective Implementation of the Agreement, and Reports on Developments by the Secretary-General of the United Nations. With respect to the second resolution, the Secretary-General of the United Nations, *inter-alia*, is requested to cooperate with FAO to ensure that there is coordination in reporting for all major fisheries instruments and activities so as to avoid duplication and to minimize the reporting burden for national administrations.

The Conference agreed that the Final Act of the Conference and the Agreement would open for signature on 4 December 1995. The Agreement will enter in force 30 days after the receipt of the thirtieth instrument of ratification or accession.

In debate on this matter concerning the number of ratifications or accessions to bring the Agreement into force, DWFNs and some Latin American States sided against other coastal States. Chile opened the debate by supporting 40 instruments of ratifications or accessions and, in turn, was supported by EC, Mexico (which indicated that the number could be as high as 60 ratifications or accessions), Japan, Uruguay, Colombia, Korea, China and Poland. For the grouping of coastal States, Peru proposed that 20 ratifications or accessions be required to give effect to the Agreement, and in so doing, was supported by Argentina, New Zealand, USA, Papua New Guinea, Canada, Australia, Indonesia, Iceland, Namibia, Norway, Federated States of Micronesia and Russian Federation.

On 4 August 1995 closing statements were made by Canada, Norway, EC, Russian Federation, Chile, United States of America, Mexico, Japan, Panama, Turkey, China, Korea, Peru, Philippines, Argentina, Estonia, Colombia, Australia (on behalf of the 16 member States of the Forum Fisheries Agency), Poland, Namibia, Uruguay, Syria, Papua New Guinea, FAO, WWF UK, Greenpeace International, and the International Collective in Support of Fishworkers. Most statements, *inter alia*, recognized the exceptional skills, energy and stamina of the Chairman of the Conference in bringing it to a successful conclusion, with a consensus decision rather than a decision by voting.

In their closing statements following the adoption of the Agreement, several delegations, and in particular DWFNs, indicated that they would advise the Chairman in due course if their respective States were in a position to sign the Agreement. The EC addressed the Chairman of the Conference by letter requesting that it be circulated as a document of the Conference. Most coastal States were enthusiastic about the outcome of the Conference, hailing it as, in the words of the Ambassador of Peru "... a significant step in the progressive development of international law ...".

In his closing statement the Chairman congratulated the Conference on adopting a far-sighted, bold and revolutionary instrument. He noted that the provisions of the Agreement were both practical and realistic, and firmly rooted in the principles of the 1982 Convention.

The Chairman pointed out that the Agreement was built on three pillars in that it:

- (i) set out the principles on which conservation and management of straddling fish stocks and highly migratory fish stocks must be based and established that such management must be based on the precautionary approach and the best scientific information available;
- (ii) ensured the conservation and management measures are adhered to and complied with, and that they are not undermined by those that fish for the two types of stocks, and
- (iii) provided for the peaceful settlement of disputes.

The Chairman also stated that he believed that if the Conference had not adopted a strong and binding Agreement, the Conference would have failed the international community and would have contributed further to the demise of the major international fishery resources. Furthermore, he warned that international conflict would have continued as frustrated States sought to initiate unilateral action to

solve problems that could only have been addressed multilaterally. Moreover, the Chairman made mention that the elaboration of the Code of Conduct for Responsible Fisheries and this Agreement would serve to strengthen conservation and management practice around the world. He called for the rapid implementation of the Agreement and urged governments to demonstrate their commitment in a tangible manner by signing the Agreement and becoming Parties to it as soon as possible.

On 4 December 1995, the sixth session of the Conference resumed and the Final Act of the Conference and the Agreement were opened for signature at United Nations Headquarters in New York.

At the commencement of the session the Chairman called the resumed session to order and made a short opening statement. He pointed out that the binding Agreement adopted by consensus on 4 August 1995 was detailed and precise, based on sound principles providing a blueprint for fisheries conservation and management with a view to long-term sustainable use of resources; responded effectively to the environmental concerns of the international community, as called for at the 1992 Rio Summit, establishing an ecosystem approach to fisheries management based on the best available scientific data and a precautionary approach to management; was reinforced by clear provisions on enforcement of conservation and management measures and procedures for the compulsory settlement of fisheries disputes; emphasised the pivotal role of subregional or regional organizations or arrangements, and was linked intrinsically to the 1982 Convention.

The Chairman further added that although the Agreement applied only to straddling fish stocks and highly migratory fish stocks, the principles enunciated therein had application to all fisheries, particularly with respect to its environmentally-based provisions. He added that the principles on the application of the precautionary approach to fisheries conservation and management could be regarded as being on the cutting edge of sound fisheries management.

It was also noted by the Chairman that the Agreement was already having an impact on the work of subregional or regional fisheries organizations or arrangements around the world, as members of these organizations had started to assess the effects of the Agreement on the respective mandates of their organizations. In this connection particular attention was being paid to issues concerning conservation and management measures, decision-making, and transparency.

While reiterating that according to FAO some 70 percent of the world's fish stocks are in serious difficulty, the Chairman noted that this Agreement would provide a basis for dealing with some of the stocks that are excessively exploited, but added that the ultimate success of the Agreement would depend on how faithfully it was implemented by those involved in fisheries targeting straddling fish stocks and highly migratory fish stocks.

Finally, the Chairman pointed out that a large number of delegations were not able to sign the Agreement on 4 December 1995 for technical and other reasons. Some important DWFNs and organizations entitled to sign the Agreement would do so at an early date as soon as their respective internal procedures had been finalized. Consequently, the Chairman emphasised that the delay in signing the Agreement

should not be construed as a lack of support for the Agreement by these States and organizations.

On behalf of the UN Secretary-General, the Legal Counsel delivered a statement noting, *inter alia*, that the conclusion of the Agreement was a significant achievement and one that would, if fully implemented, lead to enhanced fisheries conservation and management for straddling fish stocks and highly migratory fish stocks.

The US Ambassador to the UN, as UN host country, stated that the Agreement struck a reasonable balance between conservation and fishing concerns, and between the interests of coastal States and States whose vessels fish on the high seas. If ratified widely and implemented properly, the Agreement will improve the health of ocean ecosystems and ensure a lasting supply of fish to feed the world's population. The Ambassador further noted that the Agreement complemented the 1993 Compliance Agreement which, is itself, an integral component of the Code of Conduct. She added that the conclusion of the Agreement was a laudable achievement.

Complementing the remarks by the US Ambassador to the UN, Senator Ted Stevens from Alaska pointed out that the Agreement was a major step forward for fisheries conservation and management. He stated that he would work hard to ensure that the US ratified the Agreement and ultimately, that bycatch was eliminated from fisheries in the US EEZ.

At the resumed sixth session the Final Act of the Conference was signed by 45 States and organizations. These States and organizations included Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Cuba, Ecuador, EC, Fiji, Finland, Grenada, Guinea-Bissau, Iceland, India, Indonesia, Israel, Italy, Jamaica, Japan, Marshall Islands, Micronesia (Federated States of), Morocco, Namibia, Netherlands, New Zealand, Niue, Norway, Papua New Guinea, Peru, Poland, Portugal, Korea, Russian Federation, Samoa, Senegal, Spain, Tonga, Ukraine, UK, USA and Uruguay.

Representatives from some delegations expressed the view that it was surprising that some delegations that had participated actively in the Conference had not signed the Final Act. Notably absent from the resumed sixth session were China and Thailand, both of which had played an important role in the deliberations of the Conference.

The Agreement was signed by 25 States. These States included Argentina, Australia, Bangladesh, Brazil, Canada, Fiji, Guinea-Bissau, Iceland, Indonesia, Israel, Jamaica, Marshall Islands, Micronesia (Federated States of), Morocco, New Zealand, Niue, Norway, Papua New Guinea, Russian Federation, Samoa, Senegal, Tonga, Ukraine, UK and USA. The Agreement will remain open for signature for one year from 4 December 1995.

Closing statements, principally to clarify national positions, were made by the EC, Ecuador and Peru. The EC informed the Conference that it was not possible for the EC and its Member States to sign the Agreement at the present time since internal procedures were not yet completed. Similarly, Ecuador and Peru advised the Conference that internal analyses were also being undertaken on the Agreement.





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## 5. THE AGREEMENT

The Agreement adopted by the Conference on 4 August 1995 is in Annex 3. The Agreement consists of a Preamble and 3 Parts divided into 50 Articles. It also has two annexes dealing with the standard requirements for the collection and sharing of data and guidelines for the application of precautionary reference points in the conservation and management of straddling fish stocks and highly migratory fish stocks.

Significantly, Article 36 of the Agreement provides for a review Conference, four years after the Agreement's entry into force, to assess its effectiveness in securing the conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks. Through this review mechanism, there will be a degree of international pressure for all parties associated with the conservation and management of these stocks to take tangible and concrete steps towards this end.





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## 6. PARTICIPATION AND GROUPINGS OF STATES IN THE CONFERENCE

The Final Act of the Conference (Annex 2) provides a long and impressive list of States that participated in the Conference. However, representatives from many of these States only attended the sessions intermittently, and most States did not participate actively in debate in either formal or informal sessions. Indeed, it was pointed out by Peru, in debate at the sixth session, that only about 40 to 50 States had participated to a significant extent in the Conference.

The primary dichotomy on most issues in the Conference was between States with distant-water fishing interests and coastal States, with the former group being heavily outnumbered in terms of the latter group. The intensity of debate and discussions at the Conference illustrated, in a classic manner, the highly political nature of fisheries conservation and management:

### 6.1 Distant-water fishing nations

All of the world's leading DWFNs participated actively in the Conference, and on all major issues before it. This grouping of States including China, Estonia, EC, Japan, Korea, Poland, Thailand and Ukraine, strongly defended their distant-water fishing interests. This situation is understandable given the national importance of high seas fishing to these States. In 1993 these States took 3.1 million tonnes of fish of all species on the high seas, representing 65 percent of the total high seas catch.

In Conference discussion and debate, DWFNs argued principally from the 'freedom of the high seas' premise, as set forth in Article 87 of the 1982 Convention. While DWFNs saw the need for the more effective conservation and management of high seas fish stocks as a means of arresting further resource degradation, there were fundamental differences with coastal States on how and what measures needed to be put in place in order to prevent further stock depletion and to allow them to be rebuilt.

At issue for DWFNs throughout the Conference was the primary concern that their conditional right to fish on the high seas would be eroded through the progressive development of international law. Indeed, some DWFNs viewed the Conference simply as an attempt by some coastal States to extend national influence beyond the provisions of Part V of the 1982 Convention.

In debate these States generally sought to minimize the regulation of high seas fisheries through precisely described global measures. Rather the DWFNs maintained that the outcome of the Conference should specify conservation and management arrangements in broad terms only, and that subregional or regional organizations or arrangements should have the responsibility for developing and



implementing arrangements based on subregional or regional needs, taking into account the dynamics of particular fisheries.

The major issues for DWFNs in the Conference centred around the issues relating to the compatibility of conservation and management measures; areas of high seas surrounded entirely by an area under the national jurisdiction of a single State; duties of the flag State; international cooperation in enforcement on the high seas, and port State measures. While supporting fully the special requirements of developing States under the Agreement, the DWFNs at times expressed concern in the Conference about those developing States that already had well developed domestic fleets which were now fishing to a significant extent on the high seas. The DWFNs sought to ensure that these developing States with large industrial fleets were not exempted from meeting obligations under the Agreement by virtue of the level of their economic development.

## 6.2 Coastal States

Both developing and developed coastal States were strongly represented at the Conference. However, not all coastal States had a congruent interest in the outcome of the Conference, and while they were united on many issues before the Conference, there were discernable schisms on some important issues such as the application of the precautionary approach in fisheries and data requirements for conservation and management.

An important grouping of coastal States in the Conference was the Like-Minded Group of States. This Group was led by a core-group consisting of Argentina, Canada, Chile, Iceland, New Zealand, Norway and Peru, while the broader membership included Antigua and Barbuda, Australia, Bahamas, Barbados, Belize, Benin, Brazil, Cape Verde, Colombia, Costa Rica, Cuba, Dominica, Ecuador, Gambia, Ghana, Grenada, Guinea-Bissau, Guyana, India, Indonesia, Jamaica, Kenya, Malaysia, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Morocco, Namibia, Nicaragua, Nigeria, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Russian Federation, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Senegal, Seychelles, Sierra Leone, Solomon Islands, Sri Lanka, Trinidad and Tobago, Tunisia, United Republic of Tanzania, United States, Uruguay, Vanuatu and Viet Nam. However, some of these States did not take an active role in debate at the Conference.

The core-group of the Like-Minded States met frequently, usually on a daily basis throughout the sessions of the Conference, while meetings of the Group as a whole were less frequent. The core-group of the Like-Minded States also convened intersessional meetings to consider issues before the Conference, to coordinate positions in the debate and negotiations, and generally to develop a common strategy towards the Conference.

In the course of the debate and negotiations at the Conference coastal States were primarily preoccupied with two fundamental inter-related issues: the need to protect the integrity of coastal States' rights and interests with respect to areas of national jurisdiction, as provided for in Part V of the 1982 Convention, and the implementation of conservation and management arrangements for straddling fish stocks and highly migratory fish stocks that would not prejudice or otherwise undermine national efforts to secure proper and sustainable utilization of these stocks within EEZs.

In the early sessions of the Conference there was some support among coastal States for the separate treatment of straddling fish stocks and highly migratory fish stocks, especially by those States that had a significant interest in the former stocks. However, some coastal States, and in particular developing coastal States, believed that such an approach could lead to a disproportionate focus on one type of stock and as a consequence they did not favour such a strategy for negotiation purposes. For this reason there was agreement among the coastal States that both types of stocks should be treated together.

During the deliberations of the Conference it was apparent that some developing coastal States, which already have important high seas fisheries or which have national policies in place to expand into high seas fishing, sought to lessen the restrictions associated with high seas conservation and management, as might be agreed by the Conference, or to use their developing country status to reduce obligations with respect to high seas fishing. This situation put these coastal States at odds with some other developing and developed coastal States on some issues such as the application of the precautionary approach to fisheries conservation and management, data requirements for conservation and management, and duties of the flag State.

For coastal States some of the major issues in the Conference focused on compatibility of conservation and management measures, the role and functions of regional or subregional organizations or arrangements in fisheries conservation and management, non-members of organizations or non-participants in arrangements, flag and port State control, international cooperation in enforcement and effective dispute settlement.

### **6.3 Developing States**

With the exception of some Latin American States, and in particular Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Panama, Peru and Uruguay; small island developing States (SIDS) from the South Pacific including Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Marshall Islands, Papua New Guinea, Tonga, Samoa and Solomon Islands, and Trinidad and Tobago from the Caribbean; African States such as Kenya, Mauritania, Morocco and Senegal, and Asian States including China, India, Indonesia, Malaysia, Sri Lanka and Thailand, developing States generally took a low profile in Conference debate and in the deliberations of the informal working sessions. In a large measure the degree of participation by developing States reflects the economic importance of straddling fish stocks and highly migratory fish stocks to these States and the impact that the outcome of the Conference could be expected to have for these States. As a group in the discussions and debate, the Group of 77 did not play an important role in the Conference process, though the chairperson of the Group made a small number of interventions on matters not germane to the substantive fisheries issues before the Conference.

The Chairman's revised negotiating text, issued at the third session of the Conference, contained a detailed section relating to the special requirements of developing States with respect to the conservation and management of straddling fish stocks and highly migratory fish stocks. Developing States, and in particular those with important economic interests in the two types of fish stocks, played a key role in the debate that led to the strengthening and consolidating of the provisions of this part of the text (see Part VII of the Agreement) and in securing

technical assistance commitments from developed States. In discussion on this issue FAO's role in assisting developing States enhance their national capacities for fisheries conservation and management was acknowledged explicitly and subsequently reflected in Article 24 of the Agreement.

One difficulty that many developing States faced with respect to Conference participation was the high cost of sending and maintaining delegates in New York for extended periods of time. It was pointed out by some States that it costs US\$ 10 000 per delegate for airfares and per diem for a three week session of the Conference. Few developing States were in a position to afford such high costs and as a result consistency in representation at the Conference was adversely affected.

In accordance with UNGA resolution 47/192, the Conference Secretariat established a voluntary fund to support the participation of developing States in the Conference and some States benefited from that fund. However, the availability and extent of these funds were usually not known well in advance of sessions and this created difficulty for some developing States in planning their participation.





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## 7. ROLE OF INTERGOVERNMENTAL ORGANIZATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

A number of IGOs and a large number of NGOs participated in the Conference. Among the former group were representatives from regional and subregional fisheries organizations.

### 7.1 Intergovernmental organizations

In line with its mandate in the UN system, FAO played an important role in the Conference through the provision of a Scientific and Technical Adviser to the Conference and most of the technical information on fisheries that was considered by the Conference. At the end of the Conference the FAO undertook, within its financial and technical capacity, to work towards the implementation of the Agreement. In turn, the Chairman paid tribute to the role played by FAO in the Conference noting that the scientific and technical information provided by the Organization had greatly facilitated discussion and debate in the Conference.

Other UN agencies participating in the Conference included the Intergovernmental Oceanographic Commission (IOC) of UNESCO, which also made a number of technical statements available to the Conference, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP) and the World Bank.

From an early stage in the Conference it was recognized and agreed by States that the outcome would be implemented through subregional or regional organizations or arrangements. Indeed, this issue was never the subject of real debate in any of the Conference sessions. However, for existing subregional or regional fishery organizations or arrangements, the role that these organizations or arrangements will be expected to play in the implementation of the Agreement poses a number of important questions concerning the scope of their mandates and technical capacity to engage in the conservation and management of straddling fish stocks and highly migratory fish stocks.

Regional or subregional fisheries organizations represented at the Conference, and which participated in the debate through the presentation of statements included the IATTC, ICCAT, Latin American Organization for the Development of Fisheries (OLDEPESCA), FFA and CPPS. Some other fishery organizations participated in some sessions but did not enter into the debate.

A number of subregional and regional fishery organizations or arrangements have responsibility for the conservation and management of high seas resources, while other organizations do not. In addition, some FAO regional fishery organizations do not have the required conservation and management mandates. These

organizations will need to be thoroughly reviewed and, if necessary, their mandates and functions adjusted, in order to enable them to fulfil the responsibilities they have been given under the Agreement.

FAO has recently appraised the legal, technical and financial capacity of its subregional and regional fishery organizations with a view to assessing their appropriateness for the implementation of the Agreement. In some instances a sharing of functions is being contemplated such as the approach used in the South Pacific where the South Pacific Commission (SPC) undertakes scientific/technical assessments as a basis for conservation and management. In turn, the recommendations are taken into account by the FFA in proposing the implementation of management decisions by its Members. A similar approach might be considered for some FAO fishery bodies whereby their scientific, technical and advisory management expertise could be combined with existing management decision-making arrangements in their respective regions.

There was a degree of disappointment in the Conference among some States that regional and subregional fishery organizations or arrangements did not have a more active role in the Conference process, given that these organizations or arrangements will be required to largely implement the outcome of the Conference. The Chairman of the Conference was mindful of this consideration and addressed this issue at the end of the second session of the Conference. He also expressed his concern that representatives from these organizations or arrangements had not been given adequate seating, and in fact some representatives were required to sit on the Conference floor with friendly delegations or with the NGOs. Subsequently, UN conference services rectified the matter and representatives from the regional or subregional organizations or arrangements were provided dedicated seating.

## 7.2 Non-governmental organizations

A large number of NGOs participated in the sessions of the Conference (Annex 2). While the Chairman attempted to accommodate NGO interests as much as possible, the extent of NGO participation and influence in the Conference may be less than they would have liked. However, the tight Conference timetable, the large number of NGOs accredited to the Conference, and limited seating capacity, especially in the informal sessions, required NGOs to consolidate themselves into groups for the purposes of delivering statements and for participating in informal sessions. Nonetheless, despite these difficulties and limitations NGOs made substantial and important written contributions to the Conference on all articles in the Agreement. These contributions demonstrated the thorough and competent understanding NGOs have of global, regional, and local issues facing the conservation and management of straddling fish stocks and highly migratory fish stocks. However, only a few delegations including Canada, New Zealand and the United States, had NGO representatives. Nonetheless, a number of delegations consulted regularly with NGOs and these delegations were prepared to take NGO issues and positions forward in Conference debate.

The NGOs accredited to the Conference were extremely well organized, meeting intersessionally and daily during the sessions to discuss issues before the Conference, to develop common positions, to receive briefings from delegations and organizations participating in the Conference, and reciprocally, to provide briefings for the delegations and organizations on NGO positions and thinking. The daily reporting on Conference events in the *Earth Negotiations Bulletin*, and in

other publications, was of considerable assistance to delegations, and in particular those delegates which were unable to participate in all sessions or attend all meetings of each session.

It was apparent from the NGO participation in the Conference that they are well briefed on current international fisheries issues and that they could call upon technical assessments and support of a very high order. Although some States in the past expressed reservations about the role being played by NGOs in international conferences of this type, there was a high level of professional respect for the technical contributions being made by NGOs in the Conference.





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## 8. CONCLUSION

Within its carefully negotiated mandate and the framework of the 1982 Convention the Conference negotiated, in a comprehensive manner, conservation and management arrangements for straddling fish stocks and highly migratory fish stocks. Despite marked differences in approach between the two principal groups in the Conference (i.e., coastal States and DWFNs), there was strong commitment by States to achieve transparent, long-term and internationally acceptable results. There was also a keen appreciation by States of the limited timeframe set by the UNGA within which results needed to be achieved.

The work of the Conference was guided skilfully by the Chairman and the Bureau. The Chairman's dedication and determination to securing an internationally acceptable mechanism for the conservation and management of straddling fish stocks and highly migratory fish stocks underpinned the progress made during each session of the Conference and in the intersessional periods.

The significance of the Conference and its Agreement adopted by consensus on 4 August 1995 was not only that it affected an estimated 10 percent, or more, of the total world fish catches taken on the high seas. Rather the Agreement's significance is more fundamental in that it affects the inter-relatedness of fishing in zones of national jurisdiction and on the high seas when straddling fish stocks and highly migratory fish stocks are being targeted. International cooperation in respect of the exploitation of these stocks is essential so that conservation and management regimes adopted for the two jurisdictional areas (i.e., EEZs and the high seas) have a high degree of complementarity.

The Agreement adopted by the Conference is not entirely satisfactory for all States, IGOs and NGOs that participated in the Conference, but such is the nature of consensus decision making. For some States, IGOs and NGOs, the Agreement is seen as yielding too little, too late. For other States and industry groups the outcome goes further than they wanted. Nonetheless, it is recognized that if implemented effectively and fully, the conservation and management arrangements and mechanisms accepted by the Conference, and as contained in the Agreement, represent a significant step forward to achieving a greater degree of rationality in the exploitation of straddling fish stocks and highly migratory fish stocks, and of ensuring that these stocks are harvested in a sustainable manner, as called for in Chapter 17 of Agenda 21.





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Aquaculture DepartmentTitle: Structure and Process of the 1993-1995 United Nations Conference on  
Straddling ...[More details](#)**ANNEX 1****List of Abbreviations**

1982 Convention:	1982 United Nations Convention on the Law of the Sea
ACC/SC	Administrative Committee on Coordination/Sub-Committee on Oceans and Coastal Areas
<i>Ad hoc</i> Consultation	FAO sponsored <i>Ad hoc</i> Consultation on the Role of Regional Fishery Agencies in Relation to High Seas Fishery Statistics
Agenda 21	Programme of Action for Sustainable Development
CARICOM	Caribbean Community
Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
CPPS	Permanent South Pacific Commission
CSD	United Nations commission for Sustainable Development
DOALOS	Division for Ocean Affairs and the Law of the Sea, United Nations Office of Legal Affairs
DWFN	Distant-water fishing nation (or entity)
EEC/EC	European Community
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FFA	South Pacific Forum Fisheries Agency
LACSD	Inter-agency Committee on Sustainable Development
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IGO	Intergovernmental organization
IOC-Unesco	Intergovernmental Oceanographic Commission - United Nations Educational, Scientific and Cultural Organization
MCS	Monitoring, control and surveillance (of fisheries)
NGO	Non-governmental organization
OLDEPESCA	Latin American Organization for Fisheries Development
SPC	South Pacific Commission
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Conference on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
WWF	World Wide Fund for Nature







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## ANNEX 2

UNITED NATIONS  
Distr. GENERAL  
A/CONF.164/38  
7 September 1995  
ORIGINAL: ENGLISH

### UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Sixth session

New York, 24 July-4 August 1995

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### FINAL ACT OF THE UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

#### I. INTRODUCTION

1. The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened pursuant to paragraph 1 of General Assembly resolution 47/192 of 22 December 1992 in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development.

2. The United Nations Conference on Environment and Development, held at Riode Janeiro from 3 to 14 June 1992, adopted Agenda 21, paragraph 17.49 of which reads as follows:

"States should take effective action, including bilateral and multilateral cooperation, where appropriate at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of the United Nations Convention on the Law of the Sea. In particular, they should:

"...

"(e) Convene, as soon as possible, an intergovernmental conference

under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The conference, drawing, *inter alia*, on scientific and technical studies by FAO, should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means of improving cooperation on fisheries among States, and formulate appropriate recommendations. The work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas."<sup>1/</sup>

3. The General Assembly, in its resolution 47/192, recalled Agenda 21, in particular chapter 17, programme area C, relating to the sustainable use and conservation of marine living resources of the high seas, and decided that the Conference, in accordance with the mandate quoted above, should take into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The Assembly further decided that the Conference, drawing, *inter alia*, on scientific and technical studies by the Food and Agriculture Organization of the United Nations, should: (a) identify and assess existing problems related to the conservation and management of such fish stocks; (b) consider means of improving fisheries cooperation among States; and (c) formulate appropriate recommendations.

4. The General Assembly also reaffirmed that the work and results of the Conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas, and that States should give full effect to the high seas fisheries provisions of the Convention with regard to fisheries populations whose ranges lie both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks.

5. By the same resolution, the General Assembly invited relevant specialized agencies, particularly the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations and programmes of the United Nations system, as well as regional and subregional fisheries organizations, to contribute relevant scientific and technical studies and reports. It also invited relevant non-governmental organizations from developed and developing countries to contribute to the Conference within the areas of their competence and expertise.

## II. SESSIONS OF THE CONFERENCE

6. Pursuant to General Assembly resolutions 47/192, 48/194 of 21 December 1993 and 49/121 of 19 December 1994, the following sessions of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks were held at United Nations Headquarters in New York:<sup>2/</sup>

- First session: 19 to 23 April 1993;
- Second session: 12 to 30 July 1993;

- Third session: 14 to 31 March 1994;
- Fourth session: 15 to 26 August 1994;
- Fifth session: 27 March to 12 April 1995;
- Sixth session: 24 July to 4 August 1995. 3/

### III. PARTICIPATION IN THE CONFERENCE

7. Pursuant to paragraph 4 of General Assembly resolution 47/192, the following were invited to the Conference:

- (a) States Members of the United Nations or members of the specialized agencies and the International Atomic Energy Agency;
- (b) Representatives of organizations that have received a standing invitation from the General Assembly to participate, in the capacity of observers, in the sessions and work of all international conferences convened under its auspices;
- (c) Associate members of regional commissions;
- (d) Representatives of the national liberation movements recognized by the Organization of African Unity in its region;
- (e) Specialized agencies and the International Atomic Energy Agency, as well as other organs, organizations and programmes of the United Nations system;
- (f) Relevant intergovernmental organizations that had been invited to participate in the work of the Preparatory Committee for the United Nations Conference on Environment and Development;
- (g) Regional and subregional fisheries organizations;
- (h) Relevant non-governmental organizations.

8. The representatives of the following States participated in the sessions of the Conference: Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kazakstan, Kenya, Kiribati, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Pakistan, Palau, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian

Federation, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Zambia and Zimbabwe.

9. The representative of the European Community<sup>4/</sup> participated in the sessions without the right to vote.

10. The following associate members of a regional commission were represented as observers at the sessions: Montserrat and United States Virgin Islands.

11. The following national liberation movement was represented as observer at the first session: Pan Africanist Congress of Azania.

12. The following specialized agencies were represented as observers at the sessions: Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Bank.

13. The Intergovernmental Oceanographic Commission (IOC) of UNESCO, the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) were also present as observers at the sessions.

14. The following intergovernmental organizations were represented as observers at the sessions: Asian-African Legal Consultative Committee, Commission on the Indian Ocean, Inter-American Tropical Tuna Commission, International Commission for the Conservation of Atlantic Tunas, International Council for the Exploration of the Sea, International Maritime Satellite Organization, International Whaling Commission, Latin American Organization for the Development of Fisheries, Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean, North Atlantic Salmon Conservation Organization, Northwest Atlantic Fisheries Organization, Organization of African Unity, Organisation for Economic Cooperation and Development, South Pacific Commission, South Pacific Permanent Commission and South Pacific Forum Fisheries Agency.

15. The following non-governmental organizations were represented as observers at the sessions: Alaska Marine Conservation Council, Alaska Public Interest Research Group, American Oceans Campaign, American Society of International Law, Association Algérienne pour la Protection de la Nature et de l'Environnement, Association Tunisienne pour la Protection de la Nature et de l'Environnement, Association of the Bar of the City of New York, Atlantic Salmon Federation, Bering Sea Fisherman's Association, Both Ends, Canadian Oceans Caucus, Center for Development of International Law, Center for Marine Conservation, Centre de Recherches pour le Développement des Technologies Intermédiaires de Pêche, Comité Catholique Contre la Faim et pour le Développement, Confederación de Trabajadores Portuarios, Gente de Mar y Pesqueros de Chile, Confederación Nacional de Pescadores Artesanales de Chile, Coordinadora de Tripulantes Pesqueros Industriales del Cono Sur de América Latina, Council on Ocean Law, Earth Council, Earth Island Institute, Earthtrust, Environmental Defense Fund, Federación Nacional de Cooperativas Pesqueras del

Ecuador, Federation of Japan Tuna Fisheries Cooperative Associations, Fish, Food and Allied Workers, Fisheries Council of Canada, Four Directions Council, Friends of the Earth International, Friends World Committee for Consultations (Quaker United Nations Office), Fundación Hernandiana, Global Education Associates, Greenpeace International, Groupement d'Intérêt Économique, International Coalition of Fisheries Associations, International Coastal and Ocean Organization, International Collective in Support of Fishworkers, International Confederation of Free Trade Unions, International Institute for Sustainable Development, International Law Association, International Ocean Institute, International Union for the Conservation of Nature and Natural Resources (IUCN), Japan Fisheries Association, Kandune Self Help Water Project, Marine Environmental Research Institute, Namibian Food and Allied Workers Union, National Audubon Society, National Wildlife Federation, Nationwide Coalition of Fisherfolks for Aquatic Reform, Natural Resources Defense Council, Netherlands National Committee for IUCN, Newfoundland and Labrador Environmental Association, Newfoundland Inshore Fisheries Association, Oceans Institute of Canada, Ocean Trust, Overseas Fishery Cooperation Foundation, Pamalakaya (National United Movement of Fisherfolk - Philippines), Red Mexicana de Acción frente al Libre Comercio, Réserve Internationale Maritime en Méditerranée Occidentale, Samoan Association of Non-governmental Organizations, Sindicato de Obreros Marítimos Unidos, SONAR (Save Our Northwest Atlantic Resources), Trickle Up Program, United Nations Association in Canada, United Nations Association-United Kingdom, United Nations Environment and Development-United Kingdom Committee, Wildlife Conservation Society, Women and Fisheries Network, World Wide Fund for Nature, World Wide Fund Suisse.

16. Pursuant to paragraph 9 of General Assembly resolution 47/192, a voluntary fund was established in the Secretariat for the purpose of assisting developing countries, especially those most concerned by the subject-matter of the Conference, in particular the least developed among them, to participate in the Conference. Contributions to the Fund were made by the Governments of Canada, Japan, Norway and the Republic of Korea.

#### **IV. OFFICERS AND COMMITTEES**

17. At its first meeting, the Conference elected Mr. Satya N. Nandan (Fiji) as its Chairman.

18. The Conference also elected as Vice-Chairmen the representatives of the following States: Chile, Italy and Mauritania.

19. The Conference appointed the representatives of the following States as members of the Credentials Committee: Antigua and Barbuda, Argentina, Burundi, China, Kenya, New Zealand, Papua New Guinea, Russian Federation and United States of America. At its first meeting, on 28 July 1993, the Credentials Committee elected Mr. Alberto Luis Daverede (Argentina) as its Chairman.

20. At the first and second sessions, Mr. Carl-August Fleischhauer, Under-Secretary-General for Legal Affairs, the Legal Counsel, and thereafter Mr. Hans Corell, served as Secretary-General of the Conference, representing the Secretary-General of the United Nations. For the first four sessions, Mr. Dolliver L. Nelson, and thereafter Mr. Moritaka Hayashi, served as Secretary of the Conference.

21. In accordance with paragraph 11 of General Assembly resolution 47/192, the Food and Agriculture Organization of the United Nations provided an officer, Mr. David J. Doullman, to serve as Scientific and Technical Adviser to the Conference.

## V. DOCUMENTATION OF THE CONFERENCE

22. The Conference documentation 5/ included, *inter alia*, the following:

- (a) Rules of procedure; 6/
- (b) Proposals and other communications submitted by delegations; 7/
- (c) Reports and studies submitted by the Secretariat, FAO and IOC; 8/
- (d) Reports and comments submitted by intergovernmental organizations, regional and subregional fisheries organizations and arrangements; 9/
- (e) Statements by the Chairman of the Conference; 10/
- (f) A guide to the issues before the Conference, the negotiating texts and the draft agreement prepared by the Chairman of the Conference. 11/

## VI. WORK OF THE CONFERENCE

23. The Conference adopted its agenda (A/CONF.164/5) and rules of procedure (A/CONF.164/6) at its first session.

24. At the second session, the Conference devoted the first three days to general debate, following which the Chairman outlined the key issues on which there was general agreement. 12/

25. At the same session, the Conference proceeded to examine the issues relating to straddling fish stocks and highly migratory fish stocks as contained in the document entitled "A guide to the issues before the Conference prepared by the Chairman" (A/CONF.164/10).

26. At the end of the second session, the Chairman prepared a negotiating text (A/CONF.164/13), which the Conference considered at the third session.

27. Also at the third session, the Conference established two open-ended working groups to consider the information papers, prepared by FAO at the request of the Conference, on the precautionary approach to fisheries management and on management reference points. Mr. Andrés Couve (Chile) and Mr. Andrew Rosenberg (United States of America) served as chairmen of the working groups. The results of the work of the two working groups are contained in documents A/CONF.164/WP.1 and WP.2. At the end of the third session, the Chairman submitted a revision of his negotiating text (A/CONF.164/13/Rev.1), which reflected the work of the Working Groups.

28. At the fourth session, the Chairman prepared a new revision of his negotiating

text in the form of a binding instrument, entitled "Draft 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" (A/CONF.164/22). At the end of the fifth session, the Chairman prepared a revised text of the Draft Agreement (A/CONF.164/22/Rev.1).

29. At the sixth session, the Conference considered the revised text of the Draft Agreement (A/CONF.164/22/Rev.1), as well as suggested drafting changes and editorial improvements (A/CONF.164/CRP.7). Following the deliberations of the Conference, the Chairman proposed for adoption a "Draft 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" (A/CONF.164/33).

30. On 4 August 1995, the Conference adopted without a vote the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as resolutions I and II (A/CONF.164/32, annex). The two resolutions are annexed to this Final Act. In doing so, the Conference discharged the mandate given to it by the General Assembly in its resolution 47/192.

31. The Conference decided to resume its sixth session on 4 December 1995 for a ceremony of signature of the Agreement and this Final Act. The Conference requested the Secretariat to prepare the final text of the Agreement, incorporating necessary editing and drafting changes and ensuring concordance among the six language versions. 13/

IN WITNESS WHEREOF the undersigned have signed this Final Act.

DONE AT UNITED NATIONS HEADQUARTERS in New York this fourth day of December, one thousand nine hundred ninety-five, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations Secretariat.

The Chairman of the Conference:

Satya N. NANDAN

The Under-Secretary-General for Legal Affairs, The Legal Counsel:

Hans CORELL

The Secretary of the Conference:

Moritaka HAYASHI

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.96.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II, paragraph 17.49.

2/ Reports on each of the sessions are contained in A/CONF.164/9 (first (organizational) session), A/CONF.164/16 and Corr.1 (second session), A/CONF.164/20 (third session), A/CONF.164/25 (fourth session), A/CONF.164/29 (fifth session) and A/CONF/164/36 (sixth session).

3/ See paragraph 31 below.

4/ Rule 2 of the rules of procedure of the Conference (A/CONF.164/6) provides that:

"The representative of the European Economic Community shall participate in the Conference in matters within its competence without the right to vote. Such representation shall in no case entail an increase of the representation to which the States members of the European Economic Community would otherwise be entitled."

In adopting the above rule the Conference recorded the following understanding:

"This rule is agreed upon in view of the fact that, with regard to the conservation and management of the sea fishing resources, States members of the European Economic Community have transferred competence to the Community, and in no way does it constitute a precedent for other United Nations forums where a similar transfer of competence does not occur. (See Declaration of the European Economic Community upon signing the United Nations Convention on the Law of the Sea. Multilateral treaties deposited with the Secretary-General (ST/LEG/SER.E/10, p. 801).)" (A/CONF.164/6, note1)

The Secretariat was informed during the third session of the Conference that the European Economic Community had changed its name to the European Community.

5/ For a complete listing of the Conference documentation, see A/CONF.164/INF/16.

6/ A/CONF.164/6.

7/ A/CONF.164/L.1-L.50.

8/ Report of the technical consultation on high seas fishing and the papers presented at the technical consultation on high seas fishing (FAO) (A/CONF.164/INF/2); information on activities of the Intergovernmental Oceanographic Commission relevant to the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.164/INF/3); some high seas fisheries aspects relating to straddling fish stocks and highly migratory fish stocks



(FAO) (A/CONF.164/INF/4 and Corr.1); background paper prepared by the Secretariat (A/CONF.164/INF/5); the precautionary approach to fisheries with reference to straddling fish stocks and highly migratory fish stocks (FAO) (A/CONF.164/INF/8); and reference points for fisheries management - their potential application to straddling and highly migratory resources (FAO) (A/CONF.164/INF/9).

9/ Report of the first session of the International Conference on the Conservation and Management of the Marine Living Resources in the High Seas of the Okhotsk Sea (submitted by the delegation of the Russian Federation) (A/CONF.164/INF/6); *Ad hoc* consultation on the role of regional fishery agencies in relation to high-seas fishing statistics (A/CONF.164/INF/10); comments by the Coordinating Working Party on Fishery Statistics on annex I to the Draft 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 (A/CONF.164/INF/13).

10/ A/CONF.164/7, 8, 11, 12, 15, 17, 19, 21, 24, 26, 28, 30 and 35.

11/ A guide to the issues before the Conference (A/CONF.164/10); Negotiating text (A/CONF.164/13); Revised negotiating text (A/CONF.164/13/Rev.1); Draft 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 (A/CONF.164/22); revised Draft Agreement (A/CONF.164/22/Rev.1); and Draft Agreement (A/CONF.164/33).

12/ See A/48/479, para. 10.

13/ The final text of the Agreement will be issued as document A/CONF.164/37.

## ANNEX

### Resolution I

Early and effective implementation of the Agreement for the

Implementation of the Provisions of the United Nations

Convention on the Law of the Sea of 10 December 1982

relating to the Conservation and Management of Straddling

Fish Stocks and Highly Migratory Fish Stocks

The United Nations Conference on Straddling Fish Stocks and Highly Migratory

Fish Stocks,

Having adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Underlining the importance of early and effective implementation of the Agreement,

Recognizing, therefore, the need to provide for the provisional application of the Agreement,

Emphasizing the importance of rapid entry into force of the Agreement and early achievement of universal participation,

1. Requests the Secretary-General of the United Nations to open the Agreement for signature in New York on 4 December 1995;
2. Urges all States and other entities referred to in article 1, paragraph 2 (b), of the Agreement to sign it on 4 December 1995 or at the earliest subsequent opportunity and thereafter to ratify, or accede to it;
3. Calls upon States and other entities referred to in paragraph 2 of the present resolution to apply the Agreement provisionally.

Resolution II

Reports on developments by the Secretary-General

of the United Nations

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks,

Having adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Recognizing the importance of periodic consideration and review of developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks,

Recalling General Assembly resolution 49/28 of 6 December 1994, in which the Assembly underlined the importance of consideration and review of the overall developments relating to the law of the sea by the Assembly, as the global institution having the competence to undertake such a review,

Recalling also the responsibility of the Secretary-General under the United Nations Convention on the Law of the Sea to report on developments pertaining to the implementation of the Convention,

Recognizing the importance of exchange of information among States, and relevant intergovernmental and non-governmental organizations concerning the implementation of the Agreement,

1. Recommends to the General Assembly that it review developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, on the basis of a report to be submitted by the Secretary-General at the second session following the adoption of the Agreement and biennially thereafter;
2. Requests the Secretary-General of the United Nations, in preparing such report, to take into account information provided by States, the Food and Agriculture Organization of the United Nations and its fisheries bodies and subregional and regional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and relevant non-governmental organizations;
3. Also requests the Secretary-General to cooperate with the Food and Agriculture Organization of the United Nations in order to ensure that reporting on all major fisheries instruments and activities is coordinated and the required scientific and technical analysis standardized to minimize duplication and to reduce the reporting burden for national administrations.





FAO CORPORATE DOCUMENT REPOSITORY

Produced by: Fisheries and  
Aquaculture DepartmentTitle: Structure and Process of the 1993-1995 United Nations Conference  
on Straddling ...[More details](#)

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## ANNEX 3

UNITED NATIONS  
Distr. GENERAL  
A/CONF.164/37  
8 September 1995  
ORIGINAL: ENGLISH

### UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Sixth session

New York, 24 July-4 August 1995

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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 the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 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 overutilized; 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 for 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**

1. 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 and 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 Annex IX, article 1, of 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 purpose 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 associated with or dependent upon the target stocks;
- (e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon 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 overfishing 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 distribution 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 socio-economic 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 for 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 area;

(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, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal 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 members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or

participants in such arrangement. The terms of participation in such organization or arrangement 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 stock 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 stock 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 members 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 the organization or new participants in the 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 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 status 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:

(a) to 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) to 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, either 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 the latter 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, 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 a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement 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 organization or participants in such arrangement 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:

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

- (ii) to 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) to 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) to 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 the 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 programmes; 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, 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 111 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 such organization or a participant in such 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 the organization or a participant in the 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 shall establish, through subregional or regional fisheries management organizations or arrangements, 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 action, 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, a State 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 in 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 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 generally accepted international regulations, procedures and practices 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. The inspecting State 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 its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such 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 proportionate 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

1. 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 therein 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, facilities, fish and 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 vessel's 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:

- (a) to 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) to 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) to 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.

3. 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 Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, 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 stocks 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 the provisions 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 twelve months from the fourth of December 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 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 amendments to this Agreement and request the convening of a conference to consider such proposed amendments. 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 at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them 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 Annex IX, article 1, of 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 Annex IX, article 1, of 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:
    - (i) that it has competence over all the matters governed by this Agreement;
    - (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
    - (iii) that it accepts the rights and obligations of States

under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

#### Article 48

##### Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

#### Article 49

##### Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

#### Article 50

##### Authentic texts

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

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

## **ANNEX I**

### **STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA**

## Article 1

### General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

## Article 2

### Principles of data collection, compilation and exchange

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(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 either 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 to be provided, in 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 analyse 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 fishery 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).

2. 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, logbook 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 THE 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 overfished, 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 predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.



**ANNEX 68**

BIOT Ordinance No. 2 of 1997



THE BRITISH INDIAN OCEAN TERRITORY.

Ordinance No.2 of 1997.

An Ordinance to further to amend the Fisheries (Conservation and Management) Ordinance 1991 and the regulations made thereunder so as to authorise the exercise of certain powers thereby conferred outside the fishing waters of the Territory as an incident of the exercise of the right of hot pursuit in accordance with international law.

Arrangement of sections.

Section		Page.
1.	Short title, commencement and construction	2.
2.	Exercise of the right of hot pursuit.	2.

THE BRITISH INDIAN OCEAN TERRITORY

ORDINANCE No.2 of 1997

AN ORDINANCE

further to amend the Fisheries (Conservation and Management) Ordinance 1991 and the regulations made thereunder so as to authorise the exercise of certain powers thereby conferred outside the fishing waters of the Territory as an incident of the exercise of the right of hot pursuit in accordance with international law.

ENACTED by the Commissioner for the British Indian Ocean Territory.

24<sup>th</sup> February 1997

Commissioner

Short title,  
commencement  
and  
construction.

1. (1) This Ordinance may be cited as the Fisheries (Conservation and Management) (Extension of Enforcement Powers) Ordinance 1997 and shall come into force on ....1<sup>st</sup> March... 1997.

(2) This Ordinance shall be construed as one with the Fisheries (Conservation and Management) Ordinance 1991 as for the time being amended (which is hereinafter referred to as "the principal Ordinance").

(3) In this Ordinance, "the Regulations" means the Fishing Regulations 1993 as for the time being amended.

Exercise of the  
right of hot  
pursuit.

2. Any provision of the principal Ordinance or of the Regulations which confers powers on a Fisheries Protection Officer in relation to a fishing boat that is within the fishing waters, or in relation to any person or thing connected therewith, shall be construed as conferring those powers also in relation to a fishing boat that is outside the fishing waters, or in relation to any person or thing connected therewith, in any circumstances in which, in international law, those powers may properly be exercised as an incident of the exercise of the right of hot pursuit for an offence or suspected offence against any provision of the principal Ordinance or of the Regulations.

**ANNEX 69**

BIOT Ordinance No. 4 of 1998

# THE BRITISH INDIAN OCEAN TERRITORY.

Ordinance No.4 of 1998.

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

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Enacted by the Commissioner for the British Indian Ocean Territory

12 October 1998

C J B White  
Commissioner

- Short title and commencement. 1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 1998 and shall come into operation on such date as the Commissioner may appoint by notice which shall be published in the Gazette.
- Interpretation. 2. - (1) In this Ordinance, unless the contrary intention appears
- "the Director" means the Director of Fisheries appointed under section 4(1);
- "fish"-means any marine animal (other than a mammal or a bird but including shellfish), irrespective of whether it is fresh or cured, and any marine plant; and references to fish include references to any part of a fish;
- "a Fisheries Protection Officer" means any person declared by section 4(5) to be such an Officer and includes the Director;
- "fishing" means
- (a) the catching or taking of fish;
  - (b) any activity which can reasonably be expected to result in the catching or taking of fish;
- or
- (c) any operation at sea in support of or in preparation for any activity mentioned in paragraph (a) or paragraph (b),
- and, for the avoidance of doubt, includes exploring or prospecting for the presence of fish;
- "fishing boat" has the meaning assigned to that term in subsection (2);

"a fishing licence" means a licence granted under section 7;

"the fishing waters" means the fishing waters of the Territory, as defined in section 3;

"the Fisheries Conservation and Management Zone" means the zone of that name which was established by the Proclamation made by the Commissioner on 1 October 1991 (Proclamation No.1 of 1991) and whose extent is defined in that Proclamation (as it may be amended from time to time by further such Proclamation);

"the internal waters of the Territory" means the sea-waters on the landward side of the baselines from which the territorial sea of the Territory is measured;

"a licence" means a fishing licence or a transshipment licence;

"the master", in relation to a fishing boat, includes any person for the time being in command or in charge of the boat and any person in charge of fishing operations on board the boat;

"prescribed" means prescribed by or under regulations made under section 21;

"shellfish" includes crustaceans and molluscs of any kind, any (or any part of any) brood, ware, half-ware or spat of shellfish, any spawn of shellfish and the shell (or any part of the shell) of any shellfish;

"a transshipment licence" means a licence granted under section 10 and includes a fishing licence operating as a transshipment licence by virtue of section 10(4); and

"transshipment", in relation to fish, means the passing of the fish from one boat to another, whether or not it was first caught or taken by the boat from which it is passed.

(2) (a) In this ordinance, unless the contrary intention appears, the term "fishing boat" means, subject to paragraphs (b) and (c), any vessel of whatever size and in whatever way

propelled which is for the time being employed in fishing or in the processing, storage or transport of fish or in any operations (including the transshipment of fish) ancillary to any of the foregoing; and, for the avoidance of doubt but subject as aforesaid, the term includes any vessel, of whatever size and in whatever way propelled, which is for the time being operating as an independent support vessel in support of one or more other vessels that are themselves engaged in fishing.

(b) The term "fishing boat" does not, in this Ordinance, include a vessel (such as, but not limited to, a net tender) whose principal use is in support of, and is integral to, the fishing operations of a larger vessel (being itself a fishing boat) and which, when not being so used, is normally stored on board that larger vessel as part of its fishing gear; but the term does include any vessel, whether or not normally stowed as aforesaid, which is itself employed in the catching or taking

of fish.

(c) For the purposes of section 7(11), the term "fishing boat" has the meaning provided in that subsection.

(3) Unless the contrary intention appears, any provision of this ordinance, or of any regulations made under section 21, that confers powers on a Fisheries Protection Officer or on a person acting under his direction in relation to a fishing boat that is within the fishing waters, or in relation to a person or thing connected therewith, shall be construed as conferring those powers also in relation to a fishing boat that is outside the fishing waters, or in relation to a person or thing connected therewith, in any circumstances in which, in international law, those powers may properly be exercised as a incident of the right of hot pursuit for an offence or suspected offence against any provision of this ordinance or any such regulations.

The fishing waters of the Territory.

3. The fishing waters of the Territory comprise

- (a) the internal waters of the Territory;
- (b) the territorial sea of the Territory; and
- (c) the Fisheries Conservation and Management Zone.

Director of Fisheries and Fisheries Protection Officers.

4. - (1) There shall be a Director of Fisheries for the Territory who shall be appointed by the Commissioner.

(2) The Director has charge of the administration of this Ordinance and of any regulations made under section 21 and, in particular and without prejudice to the generality of the foregoing, is responsible for

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data (including statistics) and other information relevant thereto;
- (c) the development and management of fisheries;
- (d) the monitoring, surveillance and control of fishing and of operations ancillary to fishing
- (e) the regulation of the conduct of fishing and o of operations ancillary to fishing;
- (f) the grant, suspension, revocation and variation of licences under this Ordinance;
- (g) the collection of fees for licences; and
- (h) the making of such reports to the Commissioner as he may require.

(3) This Ordinance and any regulations made under section 21 shall be enforced by Fisheries Protection Officers who, for the purposes of their functions, have the powers conferred on them by this Ordinance and by c under any regulations made under section 21.

(4) In the exercise of their function Fisheries Protection Officers shall be subject to the direction c the Director:

Provided that in acting as a public prosecutor in relation to any proceeding arising under this Ordinance or under any regulations made under section 21 a Fisheries Protection Officer shall be subject to the direction of the Principal Legal Adviser.

(5) The following persons shall be Fisheries Protection Officers:

(a) every person appointed as such by Commissioner (b) every Peace Officer;

(c) every person for the time being appointed to f an Imports and Exports Control Officer for the purposes of the Imports and Exports Control Ordinance 1984;

(d) all commissioned officers of Her Majesty's ships; and

(e) any person for the time being in command or in charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Prohibited  
fishing  
methods.

5. - (1) Any person who

(a) uses or permits to be used any explosive, poison or other noxious substance for the purpose of killing, stunning or disabling fish with a view to its being caught or taken or to rendering it more easily caught or taken; or

(b) carries or has in his possession or control any explosive, poison or other noxious substance which is intended for any of the purposes mentioned in paragraph (a),

is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat, the owner, master and charterer of the boat is each guilty of an offence.

(2) Any explosive, poison or other noxious substance which is found on board any fishing boat in the fishing waters shall be presumed, unless the contrary is proved, to be intended for a purpose mentioned in subsection (1)(a).

(3) Any person who lands, tranships, sells, buys, receives or is found in possession of fish which has been caught or taken by the use of an explosive, poison or other noxious substance in contravention of



subsection (1) (a) and who, at the time when he did so or was so found, knew or had reasonable cause to believe it to have been so caught or taken is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat or by any member of the crew of a fishing boat, the master, the owner and the charterer of the boat is each guilty of an offence.

(4) In any proceedings for an offence under subsection (3) a certificate signed by a Fisheries Protection Officer stating the cause or manner of the death of, or of any injury suffered by, any fish shall be accepted as prima facie evidence of that matter, and any certificate purporting to be so signed shall be received in evidence as such unless credible evidence to the contrary is adduced.

(5) A person who is convicted of an offence under this section is liable to a fine of £50,000.

Possession of prohibited fishing gear.

6. - (1) Any person who uses any prohibited fishing gear for fishing within the fishing waters, or who is found in possession of such gear with the intention to use it within the fishing waters, is guilty of an offence.

(2) The master, the owner and the charterer of an fishing boat on which there is found, within the fishing waters, any prohibited fishing gear which any person on board that boat has used or intends to use for fishing within the fishing waters is each guilty of an offence

(3) In this section "prohibited fishing gear" means

(a) any net whose mesh size is smaller than the prescribed minimum size for nets of that type;

(b) any other type of fishing gear which does not conform to the standards prescribed for that type of gear; and

(c) any fishing gear which is prohibited by regulations made under section 21.

(4) Where, in any proceedings for an offence under subsection (2), it is proved that prohibited fishing gear was found on board a fishing boat within the fishing waters, the onus of proof that no person on board that boat had used or intended to use that gear for fishing within the fishing waters shall lie on the accused person.

(5) A person who is convicted of an offence under this section is liable to a fine of £50,000.

Fishing Licences.

7. - (1) Fishing by a fishing boat within the fishing waters is prohibited unless carried out in accordance with a licence (a "fishing licence") granted by the Director under this section.

(2) Where subsection (1) is contravened, the master, the owner and charterer of the boat is each guilty of an offence and is liable, on conviction, to fine of £500,000.

(3) Every fishing licence shall be granted in respect of a single fishing boat specified in it and n be granted to the master, the owner or the charterer c the boat.

(4) The authority to fish in the fishing waters that is conferred by a fishing licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to)-

(a) the area within which fishing is authorised;

(b) the period, times or particular voyages during which fishing is authorised;

(c) the descriptions, quantities, sizes and presentation of the fish that may be caught or taken or, conversely, that may not be caught or taken, whether as by-catch or otherwise; and

(d) the method of fishing and the type or construction of the fishing gear to be used.

(5) Within any limitation imposed under subsection (4) and subject to any regulations made under section 21, a fishing licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to

(a) the landing of any fish caught or taken;

(b) the use to which any fish caught or taken may be put;

(c) the marking of the licensed fishing boat in accordance with accepted international practice, or as directed by a Fisheries Protection Officer, including the display of its assigned international radio call sign;

(d) the installation on the licensed fishing boat of any equipment specified in the condition, including equipment for monitoring the position or operation of the boat;

(e) the records of fishing operations to be kept on board the licensed fishing boat.

(6) Where a condition to which a fishing licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £200,000.

(7) Fees may be charged for fishing licences in accordance with regulations made under section 21.

(8) The master, the owner or the charterer of a fishing boat in respect of which he intends to apply for a fishing licence shall, before so applying, supply to the Director such information as the Director may require or as may be prescribed by or under regulations made under section 21; and a person who, for the purpose of obtaining a fishing licence or in purported compliance with any such requirement or prescription, supplies information which he knows to be false or

misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(9) The Director may at any time suspend or revoke a fishing licence or vary it in any respect; but no part of any fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(10) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, if the following conditions are satisfied:

(a) the fishing is, or is to be, for sport and not for sale, barter or other profit;

(b) the fishing is, or is to be, carried out by an attended line (whether or not with a rod);

(c) there is, or there is to be, at any one time no more than two such lines in use under the control of any one person, each line having no more than three hooks attached to it (or such other number of hooks as may, for that occasion, have been specified to that person by a Fisheries Protection Officer); and

(d) the fishing is not, or is not to be, carried out in any area of the Territory which is specified, by a notice signed by the Commissioner and published in the Gazette, to be an excepted area for the purposes of this subsection.

(11) The exception to subsection (1) that is provided by subsection (10) does not apply to any fishing carried out by a fishing boat (other than one based in and operating out of Diego Garcia) in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; and any boat that is being used in such circumstances is deemed to be a fishing boat for the purposes of this subsection.

(12) The foregoing provisions of this section are without prejudice to

(a) any prohibition, restriction, condition or requirement imposed by or under a regulation made under section 21; and

(b) any other law for the time being in force in the Territory with respect to the protection and preservation of wildlife or with respect to the conservation of the natural resources of the Territory or with respect to the regulation of activities within the waters of the Territory.

Notification of fish on board fishing boats.

8. - (1) The master of a fishing boat that has fish on board shall

(a) before the boat enters the fishing waters; and

(b) before the boat leaves an area of the fishing waters in which it is

licensed to fish,

notify a Fisheries Protection Officer of the quantities, sizes, descriptions and presentation of the fish on board.

(2) A master who, without reasonable excuse, contravenes subsection (1) or who, in pursuance of that subsection, gives a notification which he knows to be false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(3) The giving of a notification under this section is not a defence to a prosecution for an offence under section 17(8).

Stowage of gear.

9. - (1) At any time when a fishing boat is in any area of the fishing waters and either

(a) it is not authorised by a fishing licence to fish in that area; or

(b) it is so authorised to fish only for certain descriptions of fish in that area,

its fishing gear, or so much of it as is not required for the fishing which it is authorised to carry out, shall be stowed in such manner as is prescribed or, if no manner is prescribed, in such manner that it is not readily available for use for fishing.

(2) If subsection (1) is contravened, the master of the fishing boat in question is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Transhipment.

10.- (1) The transhipment of fish from a fishing boat within the fishing waters or the transport from the territorial sea of the Territory or the internal waters of the Territory by any fishing boat of fish transhipped from another fishing boat is prohibited unless it is carried out in accordance with a licence (a

"transhipment licence") granted by the Director under this section in respect of every fishing boat concerned.

(2) Where subsection (1) is contravened, the master, the owner and the charterer of each boat which took part in the contravention is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(3) Every transhipment licence shall be granted in respect of a single fishing boat specified in it and may be granted to the owner or the charterer of the boat.

(4) If (but only if) it purports to do so, a fishing licence may also operate as a transhipment licence and may accordingly include, in addition to conditions or other provisions relating to fishing by the fishing boat specified in it, such conditions or other provisions relating to the transhipment or transport of fish as are authorised by this section.

(5) The authority to carry out the transhipment or transport of fish that

is conferred by a transshipment licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to)

- (a) the area within which fish may be transhipped;
- (b) the periods or times within which fish may be transhipped or may be transported by a fishing boat authorised by the licence to do so;
- (c) the descriptions and quantities of fish that may be transported by a fishing boat authorised by the licence to do so; and
- (d) the number of times that fish may be transported by a fishing boat authorised by the licence to do so.

(6) Within any limitation imposed under subsection (5) and subject to any regulations made under section 21, a transshipment licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to the treatment of transhipped fish on board the fishing boat to which it has been passed.

(7) Where a condition to which a transshipment licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £100,000.

(8) Fees may be charged for transshipment licences in accordance with regulations made under section 21.

(9) The Director may require the master, the owner or the charterer of a fishing boat in respect of which a transshipment licence has been granted, or any person who is for the time being designated to the Director, under regulations made under section 21, as the agent of the owner or charterer in respect of that boat, to provide him with such information, relevant to the licence or to the operation of the boat, as he may direct; and any person to whom such a requirement is addressed who fails without reasonable excuse to comply with it is guilty of an offence and is liable, on conviction, to a fine of £20,000.

(10) Any person who, for the purpose of obtaining a transshipment licence or in purported compliance with a requirement under subsection (9), provides information which he knows is false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(11) The Director may at any time suspend or revoke a transshipment licence or vary it in any respect; but no part of the fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

Exercise of  
Director's  
powers.

11. - (1) The powers vested in the Director by this Ordinance or by or under regulations made under section 21 may, subject to any such regulations and subject to subsection (3), be exercised by him in his

absolute discretion to such extent, in such manner and in such cases as he considers necessary or expedient for the regulation of fishing or of the transshipment of fish, for the conservation or management of fisheries or for the economic benefit of the Territory.

(2) Without prejudice to the generality of subsection (1) but subject as provided in that subsection, the Director may, in exercising his powers as aforesaid, make different provision or impose different requirements (including provision or requirements as to fees) for different boats or boats of different descriptions and may impose different limitations on or attach different conditions to licences granted in respect of different boats or boats of different description, and he may in particular exercise his powers as aforesaid for the purpose of limiting the number of boats, or boats of any particular description, that may engage in fishing, transshipping fish or transporting fish within the fishing waters; and the references in this subsection to the description

of a boat include references to the country in which is registered.

(3) In the exercise of his powers and duties under this Ordinance or under any regulations made under section 21, the Director shall be subject to the direction of the Commissioner, who, in giving him any such direction, shall enjoy the same discretion as is vested by this section in the Director:

Provided that in acting as a public prosecutor in relation to any proceedings arising under this Ordinance or under any regulations made under section 21 the Director shall be subject to the direction of the Principal Legal Adviser.

General  
enforcement  
powers of  
Fisheries  
Protection  
Officers.

12.- (1) For the purpose of enforcing the provisions of this Ordinance and of any regulations made under section 21, a Fisheries Protection Officer and any person acting under his direction may exercise the following powers with respect to any fishing boat within the fishing waters or with respect to any boat within the fishing waters which he believes to be, or to have been, employed as a fishing boat within those waters:

(a) he may stop the boat;

(b) he may require the master to cease fishing and take back on board the boat's fishing gear;

(c) he may require the master to facilitate the boarding of the boat by all appropriate means;

(d) he may go on board the boat and take with him such other persons as he may require to assist him in the exercise of his powers;

(e) he may require any person on board the boat (including the master or any member of the crew) to produce, and he may examine and take copies of, any document relating to the boat or to any such person that is in that person's possession or control on board the boat, including (without prejudice to the generality of the foregoing) any certificate of registry, licence, official logbook, official paper, article of agreement

or record of fish caught or taken;

(f) he may muster the crew of the boat;

(g) he may require the master to appear and give an explanation of any matter that he may put to the master concerning the boat or concerning any such person or any such document as is mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he considers necessary to establish whether there has been an contravention of any provision of this Ordinance or of any regulations made under section 21;

(i) he may take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint for the purpose of enabling any such search, examination or enquiry to be carried out;

(j) where he suspects any person connected with the boat of having committed an offence under this Ordinance or under any regulations made under section 21, he may, without warrant, summons or other process, take the suspected offender and take, or require the master to take, the boat

(together with the crew and any other person on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon;

(k) in the case of a boat which, in the exercise of his powers under this Ordinance or under any regulations made under section 21, he has taken or caused to be taken to any place in the Territory or has caused to be detained in the Territory or has seized, he may take such steps as he considers necessary, while having regard to the safety of the boat, to immobilise it for the purpose of preventing it from departing from that place before the completion of the search, examination or enquiry for which it was taken there or, as the case may be, before it is released from detention or seizure under the provisions of this Ordinance or by order of a court;

(l) in any case where he suspects that an offence under section 7(2), section 7(6), section 10(2) or section 10(7) has been committed, he may

(.) seize any boat which he believes to have been involved in the commission of that offence;

(ii) seize the equipment and fishing and other gear of any such boat, and also its instruments and appliances and its stores and cargo;

(iii) seize any fish which he believes to have been caught or taken or transhipped or transported in the commission of that offence or any fish products produced from any such fish; and

(iv) seize, or take copies of, any documents which he believes to be

relevant to that offence.

(2) In relation to any action which, under paragraph (i) or paragraph (j) of subsection (1), a Fisheries Protection Officer may take, or may require to be taken, in respect of a fishing boat, the references in that paragraph to the boat include references to its fishing or other gear, to its instruments and appliances, to its stores and cargo and to any fish or fish products on board it.

(3) In exercising the powers conferred on him by subsection (1), a Fisheries Protection Officer or any person acting under his direction may use such force as is reasonably necessary.

(4) The powers conferred by this section may be exercised irrespective of whether any fishing boat in respect of which, or in respect of whose operations or suspected operations, they fall to be exercised is, at the time when they fall to be exercised, engaged in fishing or in operations ancillary to fishing.

Disposal of  
detained or  
seized boats,  
etc.

13.- (1) Where, in exercise of a power conferred by section 12 or by any regulation made under section 21 or in pursuance of a requirement imposed in the exercise of such a power, a boat is seized or is taken to a place within the Territory and there detained, then, if no proceedings for an offence under this ordinance or under such regulations, being an offence alleged to have been committed in connection with that boat, have been instituted within 14 days after the boat is brought to Diego Garcia following the seizure or, as the case may be, within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer or the agent of the owner or the charterer so demands, the boat, together with any person on board it and any things seized with it or on board it at the time when it was seized or was so taken, shall be released.

(2) Where any thing is seized under section 12(1)(ii), (iii) or (iv) and the boat concerned (that is to say, the boat from which it was seized or to which

the court is satisfied that it belongs) is not itself either seized under section 12(1)(i) or taken by a Fisheries Protection Officer or a person acting under his direction to a place within the Territory under section 12(1)(j), then, unless the master of that boat has, within the specified period, taken his boat to the appointed place within the Territory in pursuance of a requirement laid on him under section 12(1)(j) or, if he is not subject to such a requirement, unless he has, within the specified period, otherwise taken it to Diego Garcia or such other place within the Territory as a Fisheries Protection Officer or a person acting as aforesaid may appoint and has there reported its arrival to a Fisheries Protection Officer, the thing seized may, subject to the following provisions of this section, be ordered by a court to be forfeited to the Crown and shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) Where any thing has been seized in the circumstances referred to



in subsection (2) and, within the specified period, the fishing boat concerned has been taken to a place within the Territory as specified in that subsection, then, if no proceedings in respect of the suspected offence in connection with which the seizure was made have been instituted within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer of the boat or the agent of the owner or the charterer so demands, the thing shall be released.

(5) In this section "the specified period" means the period of 14 days after the seizure of the thing in question or such longer period as a court may allow in any particular case.

(6) Notwithstanding any other provision of this Ordinance, where any perishable goods (that is to say, fish or fish products or other goods which are subject to decay unless kept in storage facilities specially designed or adapted for that purpose) have been seized under any provision of this Ordinance and

(a) before the elapse of any period after which, under any provision of this Ordinance, those goods must, on demand, be released; or

(b) before any such demands is made; or

(c) before the conclusion of any proceedings pending which those goods are being held,

a court is satisfied that, because of the deteriorating condition of the goods, it is no longer practicable to keep them, the court may order them to be destroyed or otherwise disposed of; and no compensation therefor shall be payable to the owner of the goods or to any other person claiming an interest in them.

Security for  
release of  
seized or  
detained boat,  
etc.

14.- (1) Where a fishing boat is seized or detained under this Ordinance or under any regulations made under section 21 in connection with a suspected offence under this Ordinance or under any such regulations and proceedings for that offence are instituted against the master, the owner or the charterer of the boat or the agent of the owner or the charterer, the master, the owner or the charterer may, at any time before the conclusion of those proceedings, apply to the court which is, or will be, seised of the proceedings for the release of the boat on the provision of security in accordance with this section.

(2) If, on an application under subsection (1), the court is satisfied that adequate security has been given to the Crown as specified in subsection (3), it may order the release of the boat.

(3) The security which is to be given to the Crown for the purposes of subsection (2) is security for the aggregate of

(a) the maximum fine that may be imposed on the defendant for the offence with which he is charged;

(b) a sum representing the value (as estimated by the court) of anything that may in due course be ordered under section 17(3) to be forfeited to the Crown; and

(c) such sum by way of costs and expenses as the court estimates may in due course be ordered by the court to be paid to the Crown under section 17(6),

or for such lesser aggregate sum as the prosecution agrees to and the court approves.

(4) If, on an application under subsection (1), the court is not satisfied as mentioned in subsection (2), it may order the release of the boat on the execution by one or more suitable persons approved by it of a bond, in the prescribed form (or in such form as it may specially approve) and conditioned in accordance with subsection (5), in an amount corresponding to the aggregate of the sums specified in paragraphs (a), (b) and (c) of subsection (3) or in such lesser amount as the prosecution agrees to and the court may fix having regard to any special circumstances of the case; but the order for release shall not have effect until the bond is executed to the satisfaction of the court.

(5) The condition of a bond executed for the purposes of subsection (4) shall be that if

(a) at the conclusion of the proceedings, the defendant is not convicted of the offence with which he was charged; or

(b) having been convicted of that offence, he pays in full and within 14 days (or such longer period as the court may, on application by him, allow) the fine imposed on him by the court, the sum specified in subsection (3) (b) (or such lesser sum as the court may allow, having regard to such order for forfeiture as has in fact been made) and the amount of any costs and expenses ordered by the court to be paid to the Crown,

the bond shall then be of no effect, but that it shall otherwise, on the expiry of the said 14 days (or such longer period as aforesaid), be of full effect and enforceable.

(6) Without prejudice to any remedy available for the enforcement of any fine imposed, or any other order made, by the court, the sum for which a bond is executed for the purposes of this section is, when the bond has become enforceable, due to the Crown as a civil debt owed by the person, or owed jointly and severally by the persons, who executed the bond, and is recoverable as such.

(7) In this section references to the release of a boat that has been seized or detained include references to the release of any person on board it and any thing seized with it or on board it at the time when it was seized or detained.

Fisheries  
Protection  
Officer'  
immunity form  
process.

15. No civil suit or criminal process shall be brought against any Fisheries Protection officer, or against any person acting under the direction of a Fisheries Protection Officer, in respect of any act performed by him, in good faith and with reasonable cause, in the exercise or purported exercise of his functions under this Ordinance or

under any regulations made under section 21.

Obstruction of  
Fisheries  
Protection  
Officers.

16. Without \*prejudice to any other provision in that behalf contained in this Ordinance or in any regulations made under section 21, any person who wilfully obstructs a Fisheries Protection officer, or any person acting under the direction of a Fisheries Protection Officer,

in the exercise of his functions under this ordinance or under such regulation or who, without reasonable cause (the onus of proof of which lies on him), refuses or neglects to comply with any order, direction or requirement lawfully given to him or laid on him by a Fisheries Protection Officer, or by any person acting as aforesaid, or to answer any question reasonably put to him by a Fisheries Protection Officer, or by any person acting aforesaid, or who prevents another person from so complying or so answering is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Offences  
penalties,  
evidence and  
proceedings,  
etc.

17.- (1) Any person who commits a contravention of any provision of this Ordinance or of any regulations made under section 21 (being a contravention which is not, by any such provision other than this subsection, specifically declared to be an offence) commits an offence under this subsection and is liable, on conviction, to a fine of £100,000.

(2) Without prejudice to section 319 of the Penal Code, any person who attempts to commit an offence under this Ordinance or under any regulations made under section 21 commits an offence under this subsection and is liable, on conviction, to the same fine as if he had committed the attempted offence.

(3) Without prejudice to any provision of this Ordinance authorising the imposition of a fine in any such case, where a person is convicted of any offence under this ordinance or under any regulations made under section 21 (being an offence in respect of the use or operation of a fishing boat), the court may, in addition to imposing a fine but subject to subsection (4), order that any fishing or other gear, or instruments or appliances, on board the boat (whether or not used in the commission of the offence), and any fish or fish products on board the boat (whether or not the offence related thereto), shall be forfeited to the Crown; and anything so forfeited shall then be disposed of as the Commissioner may direct.

(4) A court may not make an order for forfeiture under subsection (3) save on application made by or with the authority of the Principal Legal Adviser.

(5) Notwithstanding any provision of law limiting the time within which proceedings may be commenced, proceedings for an offence under this Ordinance or under any regulations made under section 21 may be commenced at any time after the commission of that offence.

(6) Notwithstanding section 194(1) of the Criminal Procedure Code 1986, the Magistrates' Court, on convicting any person of an offence under this Ordinance or under any regulations made under section 21,

has

jurisdiction to impose on him any fine to which he is liable under this Ordinance or under those regulations for that offence; and notwithstanding section 226(1) of that Code, any court may, in such a case, order that person to pay to the Crown such costs and expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper (including the expenses incurred, whether before or after the commencement of the proceedings, in the exercise of any of the powers vested in a Fisheries Protection Officer).

(7) Every Fisheries Protection Officer shall be ex officio a public prosecutor in proceedings for offences under this Ordinance or under any regulations made under section 21.

(8) Without prejudice to any liability for an offence under section 7(2) or under section 10, the master of a fishing boat on which there is found fish that has been caught or taken within the fishing waters otherwise than in accordance with a fishing licence or that has been transhipped to the boat within the fishing waters otherwise than in accordance with a transshipment licence is guilty of an offence and is liable, on conviction, to a fine of £200,000; and in any proceedings in any such case, whether for an offence under this subsection or for an offence under section 7(2) or section 10 or under regulations made under section 21, it shall be sufficient for the prosecution to prove that the fish was found on the boat and the onus of proving

(a) that the fish was not caught or taken within the fishing waters; or, alternatively,

(b) that it was caught or taken in accordance with a fishing licence; or, alternatively,

(c) that it was transhipped to that boat outside the fishing waters or in accordance with a transshipment licence,

shall then lie on the accused.

(9) A certificate signed by the Director or by any person authorised by him to sign such a certificate

(a) as to whether or not, at any material time specified in the certificate, a fishing boat so specified was licensed under this Ordinance; or

(b) as to the nature of any such licence; or

(c) as to any limitations imposed on, or conditions attached to, any such licence;

(d) as to who was the person to whom any such licence was granted,

shall, if tendered in evidence in any proceedings under this Ordinance or under any regulations made under section 21, be sufficient

evidence of that matter unless the contrary is proved.

(10) Any certificate which purports to be such a certificate as is mentioned in subsection (9) shall, in any such proceeding as aforesaid, be received in evidence as such, without proof of signature or of authorisation to sign, unless credible evidence to the contrary is adduced; and a facsimile copy of such a certificate shall be received in evidence as if it were the original certificate.

Revocation of licences of repeated offenders.

18.- (1) Where any person has once been convicted of any offence to which this section applies and is, within the period of five years following the date of that conviction, convicted of the like or any other such offence committed after that date, then, subject to subsection (3), any licence which he then holds is thereupon revoked and he shall, for the period of three years following the date of that subsequent conviction, be disqualified from being granted any further licence.

(2) Where a licence is revoked in accordance with subsection (1), no part of any fee that was charged for the licence shall be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(3) If any person whose licence is revoked in accordance with subsection (1) applies to the Director within 30 days of the conviction by virtue of which it is revoked or within such longer period as the Director may allow, the Director, in his discretion and having regard to all the circumstances of the case, may restore the licence, with effect from such date and with such variations and subject to such conditions as he thinks fit, and may remove, or reduce the duration of, or vary in such other respect as he thinks fit, the disqualification imposed by that subsection.

(4) The offences to which this section applies are any offences under this Ordinance (or under any Ordinance repealed by this Ordinance) or under any regulations made (or deemed to be made) under section 21.

Administrative penalties for minor offences

19.- (1) Where the Commissioner believes that an offence under this Ordinance (other than an offence under section 7(2)) or under any regulations made under section 21 has been committed by any person in connection with a fishing boat and he considers-

(a) that the offence is a minor offence; and

(b) that, having regard to the previous conduct of that person and the way in which the operations of the boat have previously been conducted, it would be appropriate to impose a penalty under this section instead of instituting proceeding before a court for that offence,

then, unless proceedings for that offence have already been instituted against that person, he may cause a notice in writing, in accordance with subsection (2) and in the prescribed form, to be served on that person.

(2) A notice under subsection (1) shall specify(a) the date and nature of the alleged offence;

(b) a summary of the facts on which the allegation is based (being a sufficiently full and fair summary to inform the recipient of the notice of the allegation against him); and

(c) any other matters (other than previous convictions) which the Commissioner considers relevant to the imposition of a penalty,

and a copy of the provisions of this section shall be attached to the notice.

(3) Any person on whom a notice under subsection (1) has been served may, within 28 days thereafter, serve a notice in writing and in the prescribed form on the Commissioner, requiring that any proceedings in respect of the alleged offence shall be dealt with by a court; and, when a notice under this subsection has been so served, no further proceedings may be taken under this section but nothing that has previously been done under this section shall prevent the institution of, or in any way affect, any proceedings before a court for the alleged offence or for any other offence.

(4) Any person on whom a notice under subsection (1) has been served who does not require that any proceeding in respect of the alleged offence shall be dealt with by a court may, within 28 days of that notice, serve a notice, in writing and in the prescribed form, on the Commissioner

(a) admitting the offence; and

(b) making such submissions to the Commissioner as he wishes concerning any matters which he asks the Commissioner to take into account in imposing a penalty under this section.

(5) If a person on whom a notice under subsection (1) has been served does not, within 28 days thereafter, serve on the Commissioner either a notice under subsection (3) or a notice under subsection (4), he shall be deemed to have admitted the offence.

(6) Where a person has, under subsection (3), admitted the offence or is deemed, under subsection (4), to have admitted it, the Commissioner may, after taking into account any submissions made under subsection (4), impose a monetary penalty on that person, not greater than one-third of the maximum fine to which he would be liable if convicted of that offence by a court.

(7) The admission, or deemed admission, of an offence, and the imposition of a penalty, under this section shall not be regarded for any purpose as a conviction for an offence.

(8) Where the Commissioner imposes a penalty under this section on a person, he shall cause a notice in writing and in the prescribed form

to be served on that person, giving the particulars of the penalty.

(9) A person on whom a notice has been served under subsection (8) shall, within 28 days thereafter, pay the penalty thereby notified, failing which it may be enforced in like manner as a fine imposed by a court for an offence.

(10) Where an offence is admitted, or deemed to be admitted, under this section by any person, no proceedings for that offence may be instituted against him before any court.

Non-payment of fines, etc: detention and forfeiture of boat.

20.- (1) When any fine is imposed on the master, the owner or the charterer of a fishing boat for an offence under this Ordinance or under any regulations made under section 21, or where any sum is ordered by a court to be paid by him to the Crown by way of costs or expenses incurred in connection with the proceedings for that offence, then, if no security therefor has been given, or bond for the payment thereof has been executed, under section 14, or if the court considers that any such security or bond is inadequate to secure the payment of the sums due from him in consequence of his conviction (including the value of anything ordered to be forfeited to the Crown that is not already being detained under this Ordinance), it may order that, in default of payment forthwith of all such sums, he shall give security (or additional security) therefor to the satisfaction of the court; and, subject to subsection (2), his fishing boat may then be detained (or continue to be detained) in such place within the Territory as the court may order until all such sums are paid (and

anything ordered to be forfeited but not already detained has been surrendered to the court) or until security is given as aforesaid.

(2) If any such fine as is referred to in subsection (1) or any such sum by way of costs and expenses as is there referred to remains unpaid for more than 30 days (or such longer period as the court may allow) after it was imposed or was ordered to be paid, the court may, subject to subsection (3), order that the fishing boat concerned shall be forfeited to the Crown; and it shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) An order for the forfeiture of a fishing boat under this section may extend to such of its fishing and other gear, its instruments and appliances, its stores and cargo and any fish and fish products on board it as the court may direct.

Regulations.

21.- (1) The Commissioner may make such regulations as he considers necessary for the purposes of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made by the Commissioner may provide for or may authorise the Director to provide for or to determine

(a) anything which is to be, or which may be, prescribed under this

Ordinance;

(b) the forms to be used for the purposes of this Ordinance;

(c) all questions relating to the procedures for applying for licences;

(d) all questions relating to the procedures for granting licences;

(e) the conditions subject to which licences are to be, or may be, granted;

(f) the fees to be charged for licences and the method of computing such fees;

(g) the equipment to be carried on hoard fishing boats;

(h) the reports and notifications to be made, and the records and logs to be kept, in respect of fishing boats or in respect of fishing or otherwise for the purposes of this ordinance or for the purposes of any regulations made under this section (and the procedures relating thereto);

(i) the designation, by applicants for licences or by licensees, of authorised agents, and the authority to be attributed to, and the obligations and liabilities to be assumed by or imposed on, such agents;

(j) the place or places where persons who are to be designated as authorised agents may reside or have their place of business;

(k) the execution, by applicants for licences or by licensees or by other persons, of bonds (or the provision by them of other forms of security) for securing compliance with obligations arising under a licence or otherwise arising under the provisions of this Ordinance or of any regulations made under this section;

(l) the placing on board fishing boats of Fisheries Protection Officers or of observers, and the facilities and conditions to be accorded to them while on board;

(m) the conferment on Fisheries Protection Officers, or persons acting under their direction, of such powers, additional or supplementary to those conferred by this Ordinance, as the Commissioner considers necessary or expedient for the regulation of fishing boats or of fishing or otherwise for the purposes of this ordinance or for the purposes of any regulations made under this section.

(3) Regulations made under this section may make different provision for (and the Director, in exercising an authority conferred by such regulations to make provision for any matter or to determine any matter, may make different provision for or a different determination in respect of) different parts of the fishing waters or different boats or boats of different descriptions (including descriptions which differ by reference to the countries in which the boats are registered) or



different licences or different descriptions of licences.

(4) Regulations made under this section may provide that the contravention of any provision thereof shall constitute an offence, and may prescribe, as the penalty for any such offence, a fine not exceeding £100,000.

Saving for laws regulating access to Territory, etc.

22.- For the avoidance of doubt, nothing in this Ordinance shall be construed as in any way derogating from the provisions of the Immigration Ordinance 1971 or the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997.

Repeal and savings.

23.- (1) The Fisheries (Conservation and Management) Ordinance 1991 ("the 1991 Ordinance") and the Fisheries (Conservation and Management) (Extension of Enforcement Powers) Ordinance 1997 are repealed.

(2) Without prejudice to section 21(1) or section 22(2) of the Interpretation and General Provisions Ordinance 1993, the repeal of the 1991 Ordinance does not affect

(a) the continuing operation, according to its tenor, of any licence granted or other instrument made under or for the purposes of that ordinance; or, in particular,

(b) the continuing operation of the Fishing Regulations 1993;

and any such instrument (including the said Regulations;" shall thereafter be deemed to have been granted or made under the relevant enabling provision of this Ordinance or, as the case may require, for the purposes of this Ordinance, and any reference therein to a particular provision of the 1991 Ordinance shall thereafter be construed as if it were a reference to the corresponding provision of this Ordinance.

(3) Notwithstanding subsection (1) and without prejudice to subsection 21(1) of the Interpretation and General Provisions Ordinance 1993, proceedings may be instituted after the commencement of this Ordinance for an offence alleged to have been committed before that commencement under any provision repealed by subsection (1), and any such proceedings shall be dealt with for all purposes as if this ordinance had not been enacted and the repealed provision remained in force; and any proceedings that were instituted before the commencement of this ordinance by virtue of any provision repealed by subsection (1) may be continued thereafter and may - Likewise by dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision remained in force.