

104TH CONGRESS }
2d Session }

SENATE

{ TREATY DOC.
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AGREEMENT FOR THE IMPLEMENTATION OF THE
UNITED NATIONS CONVENTION OF THE LAW OF THE
SEA OF 10 DECEMBER 1982 RELATING TO FISH
STOCKS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AGREEMENT FOR THE IMPLEMENTATION OF THE PROVI-
SIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF
THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVA-
TION AND MANAGEMENT OF STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS, WITH ANNEXES ("THE
AGREEMENT"), WHICH WAS ADOPTED AT UNITED NATIONS
HEADQUARTERS IN NEW YORK BY CONSENSUS OF THE UNITED
NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS ON AUGUST 4, 1995, AND
SIGNED BY THE UNITED STATES ON DECEMBER 4, 1995



FEBRUARY 20, 1996.—Agreement was read the first time and, together
with the accompanying papers, referred to the Committee on Foreign
Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

29-118

WASHINGTON : 1996

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 20, 1996.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith 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, with Annexes ("the Agreement"), which was adopted at United Nations Headquarters in New York by consensus of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks on August 4, 1995, and signed by the United States on December 4, 1995. I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the Agreement.

The Agreement represents a considerable achievement for the United States in promoting better stewardship of living marine resources. It strikes a sound balance between the interests of coastal States in protecting offshore fishery resources and those of States whose fishing vessels operate on the high seas. If widely ratified and properly implemented, the Agreement should significantly improve the prospects for sustainable fisheries worldwide.

The Agreement builds directly upon, and strengthens, the fishery provisions contained in the 1982 United Nations Convention on the Law of the Sea ("the Convention"), which I transmitted to the Senate for advice and consent on October 6, 1994. As such, the Agreement further reflects the central role of the Convention in governing the maritime relations of the international community.

Perhaps more than any other nation, the United States stands to benefit from widespread adherence to this Agreement. The Agreement will help to ensure that the harvesting of fish by vessels of other nations in waters beyond our exclusive economic zone does not undermine our domestic management of fisheries within U.S. jurisdiction. In addition, by promoting sound conservation practices generally, the Agreement can restore and maintain productive ocean fisheries for the benefit of American consumers and for U.S. fishing vessels wherever they operate.

With regard to disputes concerning the interpretation or application of the Agreement, I intend to choose a special arbitral tribunal

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constituted in accordance with Annex VIII of the Convention, as recommended in the accompanying report of the Department of State.

I recommend that the Senate give early and favorable consideration to the Agreement and give its advice and consent to its ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE
Washington, January 24, 1996.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you 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, with Annexes, ("the Agreement"). The Agreement was adopted on August 4, 1995, at United Nations Headquarters in New York by consensus of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks and signed on behalf of the United States on December 4, 1995. I recommend that the Agreement be transmitted to the Senate for its advice and consent to ratification.

The Agreement has its origins in Agenda 21, the detailed plan of action adopted by the 1992 United Nations Conference on Environment and Development. Responding to the precipitous decline in a number of valuable fish stocks in the world's oceans, Agenda 21 called for an intergovernmental conference to strengthen the conservation and management of straddling fish stocks and highly migratory fish stocks.

Straddling fish stocks are stocks which occur both within the exclusive economic zones (EEZs) of one or more coastal States and in adjacent high seas areas. Among these are valuable stocks of cod in the Northwest Atlantic Ocean and pollock in the Bering Sea. Highly migratory fish stocks are those which migrate extensively across the high seas and through the EEZs of many coastal States. Examples include tuna and swordfish.

The conference began under United Nations auspices in 1993 and successfully concluded in August 1995 with the adoption of the Agreement. On December 4, 1995, the first day on which the Agreement was open for signature, Ambassador Madeleine Albright, U.S. Permanent Representative to the United Nations, signed the Agreement on behalf of the United States, subject to ratification. Representatives of 24 other States signed the Agreement on the same day. Many other States have indicated their intention to sign the Agreement in the near future. Ratification or accession by thirty States is required to bring the Agreement into force.

The Agreement, as its title indicates, builds upon certain provisions of the 1982 United Nations Convention on the Law of the Sea ("the Convention") related to fisheries. In so doing, the Agreement reaffirms the central role of the Convention as the accepted founda-

tion and framework for this critical body of international law. Although the United States need not become party to the Convention in order to become party to the Agreement, we would maximize our benefits from these two treaties if the United States were a party to both of them. The Convention was transmitted to the Senate for its advice and consent October 6, 1994 (Treaty Doc. 103-39).

The linkage between the two treaties is very strong. As discussed in more detail below, much of the text of the Agreement is drawn from, and elaborates upon, provisions of the Convention. Article 4 of the Agreement stipulates that the Agreement "shall be interpreted and applied in the context of and in a manner consistent with the Convention." Part VIII of the Agreement also provides that disputes arising between parties under the Agreement (as well as under regional fishery agreements) are subject to resolution in accordance with the dispute settlement provisions of the Convention.

As a practical matter, U.S. adherence to both treaties will best ensure that they are implemented in a manner consistent with U.S. fishery interests. A brief review of the fisheries provisions of the Convention demonstrates how closely tied the two treaties are. The Convention permits coastal States to establish EEZs extending 200 nautical miles from their coastal baselines. Under Articles 56, 61 and 62 of the Convention, coastal States enjoy sovereign rights and exclusive jurisdiction to exploit, conserve and manage living marine resources within their EEZs, subject to general obligations to prevent overfishing and to allocate surplus resources, if any, to other nations. Because approximately 90 percent of living marine resources are harvested within 200 miles of shore, the Convention effectively gives coastal States full control over the large majority of marine fisheries.

Beyond the EEZs of any State, *i.e.*, on the high seas, all States have the right for their nationals to engage in fishing. Articles 116-119 of the Convention qualify this right by making it subject to certain rights, duties and interests of coastal States, as well as to a general duty to conserve high seas resources and to cooperate with other States in conservation efforts. In fulfillment of these obligations, multilateral fishery agreements and organizations have been established to conserve and manage high seas fisheries in many regions of the world.

Certain species and categories of fish do not remain solely within EEZs or solely in the high seas, but rather migrate across the line that separates the EEZs from the high seas. For anadromous stocks (such as a salmon) and catadromous species (such as eels), Articles 66 and 67 of the Convention, respectively, essentially forbid high seas harvesting. For straddling stocks and highly migratory species, the Convention contains the following general injunctions:

Article 63(2): Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the

measures necessary for the conservation of these stocks in the adjacent area.

Article 64(1): The coastal State and other States whose nationals fish in the region for highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.

Article 64(2): The provisions of paragraph 1 apply in addition to the other provisions of this Part [i.e., Part V of the Convention, which sets forth, *inter alia*, the rights and duties of coastal States with respect to living marine resources in their EEZs].

These general provisions, while establishing an agreed framework for cooperation and conservation, have not proven sufficiently specific to curb overharvesting that has plagued several of the world's key fish resources. Indeed, since 1989, total marine catches have begun to decline. The United Nations Food and Agriculture Organization reports that about 70 percent of marine fish stocks are fully to heavily exploited, overexploited, depleted or slowly recovering. Of particular concern to the United States, the Aleutian Basin pollock stock collapsed in the late 1980's, while the stock of Western Atlantic bluefin tuna has become severely depleted.

The agreement gives the international community the chance to reverse these trends and to create mechanisms needed to ensure sustainable marine fisheries. Its 50 articles and two annexes strengthen and make more specific the provisions of the Convention, and back those provisions up with effective enforcement techniques and compulsory dispute settlement. The following analysis provides a review of the salient aspects of the Agreement.

Part I (Articles 1-4)

Article 1 of the Agreement defines several key terms, including "Convention", "conservation and management measures", "fish", "arrangement" and "States Parties". The Agreement does not define either "straddling fish stock" or "highly migratory fish stock". However, the negotiators understood the former term to mean those fish stocks referred to in Article 63(2) of the Convention. Similarly, the latter term is understood to mean those fish stocks referred to in Article 64 of the Convention and listed in Annex I to the Convention. In fact, the list in Annex I to the Convention includes certain species which are not fish, such as cetaceans. The Agreement, however, only covers *fish* stocks and so would not apply directly to the conservation and management of whales or other non-fish species.

Article 2 sets forth the objective of the Agreement to promote long-term conservation and sustainable use of these fish stocks through effective implementation of the Convention.

Article 3 generally limits application of the Agreement to the high seas, *i.e.*, to waters beyond the fisheries jurisdiction of any nation. However, Articles 3(1) and 3(2) require coastal States to apply the conservation and management provisions of Articles 5 through 7 within their respective EEZs in their regulation of fisheries.

While the Agreement elaborates considerably upon general provisions of the Convention, none of its requirements, including those relating to enforcement, are inconsistent with the Convention. To confirm this, Article 4 of the Agreement provides that

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 (Articles 5–7)

Part II of the Agreement lays out the conservation and management measures that Parties are to apply. Although most of these measures relate specifically to straddling fish stocks and highly migratory fish stocks, several provisions in this Part recognize the need to address marine ecosystems as a whole if fishery conservation and management is to succeed.

Article 5 sets forth general principles for fishery conservation and management that build upon the provisions of Articles 61 and 117 of the Convention, including obligations to:

- ensure the long-term sustainability of these stocks;
- take measures that are based on the best scientific evidence available;
- assess relevant environmental impacts;
- adopt conservation and management measures for other stocks belonging to the same ecosystem;
- minimize catch of non-target species; and
- take measures to prevent or eliminate overfishing and excess fishing capacity.

Article 6, in conjunction with the two Annexes to the Agreement (particularly Annex II), obligates Parties to apply a precautionary approach to fishery conservation and management. This approach requires, *inter alia*, States to be more cautious in their management efforts when information is uncertain, unreliable or inadequate.

Article 7 preserves a critical distinction set forth in the Convention between the treatment of straddling fish stocks and that of highly migratory fish stocks. Specifically, Article 7(1) makes clear that conservation and management measures adopted on a multilateral basis for straddling fish stocks apply only on the high seas, while such measures for highly migratory fish stocks apply both on the high seas and within relevant EEZs.

Article 7 also requires that, for both categories of stocks, conservation and management measures applicable within the EEZ and those applicable for the high seas must be compatible. Both coastal States and States whose vessels fish on the high seas are required to cooperate to achieve the compatibility of such measures, taking into account a series of factors set forth in Article 7. Should Parties be unable to achieve the compatibility of such measures within a reasonable time, any Party could bring the matter to

compulsory, binding dispute settlement in accordance with Part VIII of the Agreement.

Part III (Articles 8–16)

The negotiators of the Agreement recognized that most of the actual conservation and management work for these fish stocks must be carried out through regional fishery organizations or arrangements that have been, or may be, established in accordance with the Convention. They also realized, however, that the operations of such organizations must be strengthened to address the growing, and in some cases severe, conservation problems that have arisen.

Part III of the Agreement contains rules for improving the functioning of such regional fishery organizations. Articles 8 requires both coastal States and States whose vessels fish on the high seas to cooperate in these endeavors. Of particular importance is Article 8(3), which requires any State whose fishermen wish to harvest a stock that is governed by such an organization either to join the organization or agree to apply the conservation and management measures established by such organization. This rule, if properly implemented, would greatly reduce the problems of “non-party” fishing that have undermined the effectiveness of regional fishery organizations.

Article 9 describes the issues that must be addressed in the context of regional fishery organizations and agreements while Article 10 lists a variety of functions that such organizations must perform to be effective.

Article 11 deals with the difficult question of new members or participants, *i.e.*, States whose fishing vessels seek access to regulated fisheries for the first time. This Article reflects the view that the determination of participatory rights for such vessels must proceed on a case-by-case basis, taking into account a variety of factors.

Article 12 requires transparency in the operations of regional fishery organizations and arrangements. Representatives from other intergovernmental organizations and from non-governmental organizations (including environmental and industry groups) must be afforded an opportunity to participate in the work of these organizations without undue restrictions.

Article 13 calls upon States to strengthen existing fisheries organizations, while Article 14 (in conjunction with Annex I) provides for the collection and dissemination of data and the conduct of scientific research related to fisheries conservation and management.

Articles 15 and 16 address those high seas areas that are either enclosed or semi-enclosed seas (as those terms are defined in Article 122 of the Convention) or that are completely surrounded by waters under the fisheries jurisdiction of a single coastal State, such as the central part of the Sea of Okhotsk.

The United States is a member of several regional fishery organizations concerned with straddling fish stocks and highly migratory fish stocks, including the International Commission for the Conservation of Atlantic Tunas, the Inter-American Tropical Tuna Commission, the Commission for the Conservation of Antarctic Marine Living Resources and, most recently, the Northwest Atlantic Fisheries Organization. Moreover, on December 8, 1995, the Con-

vention for the Conservation and Management of Pollock Resources in the Central Bering Sea entered into force. While this treaty does not create a formal organization, it constitutes an “arrangement” for purposes of, and thus would be strengthened by, the Agreement.

Part IV (Article 17)

Part IV of the Agreement contains provisions covering the obligations of Parties that are not members of regional fishery organizations, as well as the rights of members of those organizations with respect to vessels of non-members that engage in fishing for regionally regulated stocks. Article 17(1) and (2) reinforce the rule of Article 8(3), by barring vessels from regulated fisheries if the flag State is not a member of the relevant regional fishery organization or otherwise does not agree to apply the fishing rules established by such organization.

Article 17(3), along with Article 1(3), also provides a mechanism through which Taiwan, and the many fishing vessels flying the Taiwanese flag, may be brought within the ambit of such organizations. Article 17(4) provides for States to deter fishing operations of non-member vessels which undermine the effectiveness of regional conservation and management measures.

Part V (Article 18)

Part V of the Agreement articulates a broad range of obligations for flag States whose fishing vessels operate on the high seas. These obligations, which build on the general flag State responsibilities set forth in the Convention, are drawn largely from, and are consistent with, the provisions of the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, to which the Senate gave its advice and consent in 1994. Like the 1993 Agreement, Part V requires all States to ensure that their vessels fish in accordance with regional fishery rules and should thus deter individuals from reflagging their vessels as a means of avoiding the application of those rules. Such reflagging schemes undermine the effectiveness of regional fishery organizations and should be regarded as antithetical to the purpose of the Agreement.

Article 18 requires flag States that are Party to the Agreement to ensure that their vessels comply with regional fishery measures and do not engage in any activity that undermines the effectiveness of such measures. Flag States may only authorize their vessels to fish on the high seas if they can exercise effective control over those vessels. These provisions would strictly curtail the use of flags of convenience by fishing vessels wishing to avoid fishery restrictions.

Part VI (Articles 19–23)

Part VI of the Agreement requires States Parties to ensure compliance with, and enforcement of, fishery conservation and management measures. These provisions represent a considerable advance over the enforcement rules of most international fishery regimes. While Part VI of the Agreement reaffirms the primary responsibility of flag States to ensure that their vessels fish in accordance

with applicable rules, it also gives other States certain rights to take enforcement action with respect to vessels of other States Parties to the Agreement fishing on the high seas, primarily through boarding and inspection to ensure compliance with regional fishery rules.

Article 19 requires flag States to ensure compliance by their vessels with regional conservation and management measures. Flag States must fully investigate alleged violations and promptly penalize offenders. Sanctions must be adequate in severity to discourage further violations and to deprive offenders of the benefits of their illegal activities.

Article 20 promotes international cooperation in compliance and enforcement efforts, including through the exchange of information about alleged violations and through joint activities to deter fishing violations. Article 20(6) also requires a flag State to cooperate with a coastal State where there are reasonable grounds for believing that a vessel of the former that is presently on the high seas has previously engaged in unauthorized fishing within the EEZ of the latter. In such cases, the forms of cooperation include authorizing the coastal State to board and inspect the vessel on the high seas.

The Agreement reflects the recognition that exclusive reliance on flag-State enforcement has not served the international community well in the conservation and management of high seas fishery resources. Although many flag States act responsibly with respect to its fishing vessels on the high seas, others are either unable or unwilling to exercise such responsibility. Thus, Articles 21 and 22 of the Agreement set forth a carefully crafted regime under which States other than flag States may take action to investigate and to respond to fishing violations on the high seas that may be committed by vessels of other Parties to the Agreement.

Article 21 authorizes any Party to the Agreement that is a member of a regional fishery organization to board and inspect vessels of another Party fishing on the high seas of that region for the purpose of monitoring compliance with fishery rules applicable in that region. The regional organizations are to develop procedures to govern such boarding and inspection. If a regional organization has failed to develop such rules within two years of the adoption of the Agreement (*i.e.*, by August 1997), the basic procedures for boarding and inspection contained in Article 22 shall apply in that region.

Article 21(4) requires States who wish to conduct boardings and inspections pursuant to this regime to inform other States whose vessels fish in the relevant region of the form of identification issued to duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and must be identifiable as being on government service. As such, the Agreement permits all U.S. Government vessels to conduct such boardings and inspections, both those that are presently authorized, as well as any others that may be so authorized in the future.

Under Article 21(5), where an inspecting State uncovers evidence that a vessel has violated an applicable conservation and management measure, that State shall secure the evidence and immediately notify the flag State. Article 21(6) requires the flag State to respond to such notification (generally within three working days) and either to investigate and take any appropriate enforcement ac-

tion against the vessel or to authorize the inspecting State to conduct such investigation on its behalf. If the flag State chooses the latter option, and the evidence produced by the investigation so warrants, Article 21(7) obligates the flag State to take enforcement action against the vessel or to authorize the investigating State to do so.

Article 21(8) provides that, if the flag State fails to respond to the initial notification, or fails to take the required action described above, and if the violation in question is serious (as broadly defined in Article 21(11)), the inspectors may stay on board and direct the vessel to port for further investigation. If the violation is not serious, the inspectors must disembark the vessel (but the inspecting State may pursue dispute settlement against the flag State).

These provisions are designed primarily to compel a flag State that is a Party to the Agreement to act responsibly where there are reasonable grounds to believe that one of its fishing vessels on the high seas has violated applicable fishery rules. If the flag State does not act responsibly, other States in the region may take action promptly to prevent any serious violation from continuing.

The Agreement includes a number of safeguards to ensure that States other than the flag State do not abuse these rights to board, inspect and take further action. First, as mentioned above, whenever a non-flag State boards a vessel, it must immediately notify the flag State. The flag State must also be notified promptly of any further action taken. Second, under Article 21(10), inspectors must observe international rules and generally accepted practices and procedures relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. Boarding and inspection may not be conducted in a manner that would constitute harassment of any fishing vessel. Third, if boarding or inspection occurs unlawfully or in a manner that exceeds what is reasonably required, Article 21(18) renders the inspecting State liable for damage or loss.

Finally, Article 22(1) contains a series of specific safeguards and procedures that must be followed in any boarding and inspection conducted pursuant to Article 21. Article 22(1)(f) requires inspectors to avoid the use force, except for their own protection and where they are obstructed in the execution of their duties. During negotiations on this issue, the United States successfully opposed proposals that would have limited the use of force in such situations to self-defense. Article 22(1)(f) clearly authorizes the use of force not only for self-defense but also to ensure the successful completion of the inspection.

As noted above, these safeguards and procedures apply in their entirety in any region where a regional organization has not, by August 1997, developed procedures of its own. Even where a regional organization tailors its own procedures, those procedures must be consistent with those of Article 22.

The regime set forth in Articles 21 and 22, while representing an advance in terms of fisheries enforcement, remains faithful to the general principle of international law that States other than the flag State may only take fisheries enforcement action against a vessel on the high seas with the consent of the flag State. By becoming

a Party to the Agreement, a State gives its consent for its vessels to be subject to the regime of regional fisheries enforcement set forth in Articles 21 and 22.

The negotiators of the Agreement recognized that one or more regional organizations may develop alternative mechanisms to ensure compliance and enforcement that would render the application of the regime for boarding and inspection prescribed in Articles 21 and 22 unnecessary in that region. Accordingly, Article 21(15) permits States within such a region to limit application of the regime as between themselves.

Article 23 reflects the rule of international law that port States may also take actions with respect to foreign flag vessels voluntarily in their ports to promote effective fishery conservation and management. Article 23(3) also specifies that States may prohibit landings and transshipments of fish that have been taken in a manner that undermines the effectiveness of measures adopted by the international community on a subregional, regional or global basis.

Part VII (Articles 24–26)

This Part of the Agreement deals with the concerns of developing States and suggests the forms of cooperation and assistance that may be provided to them, either directly or through existing international mechanisms. The provision of such assistance should improve the effectiveness of fishery management by developing States, to the benefit of all States who wish to exploit living marine resources, particularly highly migratory fish stocks whose ranges extend across many EEZs and the high seas. The Administration envisions that private joint ventures, referenced in Article 25(2), would be a principal vehicle for the provision of such assistance.

Part VIII (Articles 27–32)

Part VIII of the Agreement generally provides that disputes arising under the Agreement, as well as those arising under regional fishery agreements, are to be resolved in accordance with the provisions for compulsory, binding dispute settlement set forth in the Convention.

Articles 27, 28 and 29, respectively, require States to settle disputes peacefully, to prevent disputes by instituting expeditious decision-making procedures within regional organizations and, where appropriate, to utilize expert panels in resolving disputes of a technical nature.

Article 30(1) makes the dispute settlement provisions set forth in Part XV of the Convention applicable to any dispute between States Parties to the Agreement concerning the interpretation or application of the Agreement, whether or not those States Parties are also party to the Convention. Article 30(2) makes those same provisions applicable to disputes between States Parties to the Agreement concerning the interpretation or application of regional fishery agreements relating to straddling fish stocks and highly migratory fish stocks, whether or not those States Parties are also party to the Convention.

Article 30(3) stipulates that, for any State Party to the Agreement that is also a State Party to the Convention, the procedure

for the settlement of disputes that has been accepted by that State in accordance with Article 287 of the Convention shall also apply to dispute settlement under the Agreement, unless that Party declares otherwise. For any State Party to the Agreement that is not a State Party to the Convention, Article 30(4) permits such a State to choose, by means of a written declaration, one or more of the procedures set out in Article 287 of the Convention for the settlement of disputes under the Agreement.

In conjunction with the transmittal of the Convention to the Senate in October 1994, I recommended that, for fishery disputes arising under the Convention, the United States choose a special arbitral tribunal constituted in accordance with Annex VIII of the Convention as the appropriate dispute settlement procedure. See Sen. Treaty Doc. 103-39, pp. ix-x. To be consistent, I recommend that the United States choose the same procedure for disputes arising under the Agreement.

Article 30(5) specifies the law that a court or tribunal shall apply in resolving such disputes. Applicable law shall include the Convention, the Agreement, any relevant regional 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. This inclusive listing directs a court or tribunal to consider a broad range of conservation norms, which would cover, for example, the moratorium on the use of large-scale pelagic driftnets on the high seas as called for in United Nations General Assembly Resolution 46/215.

Article 31 allows States Parties to seek, and authorizes a court or tribunal to prescribe, provisional measures pending final settlement of a dispute. Article 32 makes clear that Article 297 of the Convention, which exempts any dispute concerning fishery conservation and management measures adopted by a coastal State within its EEZ from binding dispute settlement, also applies to dispute settlement under the Agreement.

Parts IX, X, XI and XII (Articles 33-36)

These Parts of the Agreement address a variety of subsidiary matters. Part IX (Article 33) calls upon Parties to encourage other States to become party to the Agreement and to deter activities of non-parties that undermine the effective implementation of the Agreement. Part X (Article 34), which is based on Article 300 of the Convention, requires Parties to fulfill their obligations under the Agreement in good faith and to exercise their rights in a manner that would not constitute an abuse. Part XI (Article 35) restates the general principle that States are liable in accordance with international law for damage or loss attributable to them in regard to the Agreement. Part XII (Article 36) provides for a review conference to convene four years after the Agreement enters into force to assess the adequacy of its provisions.

Part XIII (Articles 37-50)

Part XIII of the Agreement contains the "final clauses," covering such matters as signature of the Agreement, its entry into force, reservations, amendments, denunciation, the depositary and authentic texts. All States and certain eligible non-State entities

(such as the European Union) may become party to the Agreement. In accordance with Article 40, the Agreement will enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

Article 41 permits States and eligible entities to apply the Agreement provisionally. The Department of State does not recommend the exercise of this option by the United States at this time. We are instead hopeful that the Agreement will enter into force quickly and that the United States will be among the initial parties to it. In the meantime, the Department of State and other concerned departments and agencies have already begun to consider how the provisions of the Agreement may be utilized to strengthen the regional fishery organizations of which the United States is a member.

Articles 42 and 43 track analogous provisions in the Convention. While no reservations or exceptions are permitted to the Agreement, a State may make certain declarations or statements when signing, ratifying or acceding to the Agreement. The Department of State does not recommend any such declarations or statements.

Article 44 addresses the legal relationship of the Agreement to other treaties. Pursuant to Article 45, no amendment may enter into force for a Party except upon the deposit of an instrument of ratification or accession of such amendment by that Party. Article 46 permits a Party to denounce the Agreement at any time, effective one year after notification of denunciation. Articles 47 through 50 deal with ancillary matters such as participation in the Agreement by international organizations, the status of the Annexes to the Agreement, the depositary for the Agreement and the authentic texts.

The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. §1801 et seq.), provides legislative authority on which to carry out the obligations of the Agreement relating to conservation and management of fishery resources within the U.S. EEZ. Title I of the Fisheries Act of 1995 implements those obligations of the Agreement concerning the operations of U.S. fishing vessels on the high seas. Finally, various statutes authorizing U.S. participation in regional fishery organizations; *e.g.*, the Tuna Conventions Act of 1950 (16 U.S.C. §951 et seq.), the Atlantic Tunas Convention Act of 1975 (16 U.S.C. §971 et seq.), the South Pacific Tuna Act of 1988 (16 U.S.C. §973 et seq.), the Antarctic Marine Living Resources Act of 1984 (16 U.S.C. §2431 et seq.) and the Northwest Atlantic Fisheries Convention Act of 1995, provide any additional authority to carry out the obligations of Part III of the Agreement concerning the operations of such organizations. Therefore, no new legislation is necessary for the United States to implement the Agreement.

This Agreement represents a major step forward in the conservation and management of living marine resources on a sustainable basis. Properly implemented, it will improve the health of the

world's marine ecosystems and protect the interests of fishermen, consumers and all others who depend on the oceans.

Accordingly, I recommend that this Agreement be transmitted to the Senate as soon as possible for its early and favorable advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

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
STOCKSArticle 5General 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 5

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 23Measures 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 24Recognition 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.

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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

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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.

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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.

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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:

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- (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 DATAArticle 1General 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 2Principles 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 5Reporting

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 6Data 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 7Data 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.

I hereby certify that the foregoing is a true copy 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, adopted on 4 August 1995 by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de l'Accord aux fins de l'application des dispositions de la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrateurs, adopté le 4 août 1995 par la Conférence des Nations Unies sur les stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et les stocks de poissons grands migrateurs, dont l'original est déposé auprès du Secrétaire général des Nations Unies.

For the Secretary-General,
The Legal Counsel
(Under-Secretary-General
for Legal Affairs)

Pour le Secrétaire général,
Le Conseiller juridique
(Secrétaire général adjoint
aux affaires juridiques)



Hans Corell

United Nations, New York
4 December 1995

Organisation des Nations Unies
New York, le 8 décembre 1995

