
ON MODERNIZING AND ADAPTING THE IOTC AGREEMENT**PREPARED BY: T. LØBACH**

PURPOSE

Draft text for the modernizing and amending the IOTC Agreement is provided for discussion and amendment prior to it being forwarded to the Commission in June 2019.

BACKGROUND

The Technical Committee on Performance Review (TCPR) has been tasked with developing new text for the IOTC Agreement. Under the direction of the TCPR, in accordance with sections 2a, 2c and 3 of the TCPR Terms of Reference, and in alignment with the agreed program of work, a drafting group was established with the following Terms of Reference:

1. To Develop proposed language for the IOTC Agreement that takes into account modern principles of fisheries management
2. The group is open to all CPCs willing to participate and the group will operate electronically between TCPR meetings
3. To work in a phased approach as follows:
Phase 1: To review, confirm, and further identify the gaps in the IOTC Agreement in order to take account of the principles of modern fisheries management using the report and supporting documents prepared in the context of the second performance review as a starting point.

Phase 2: To propose language to modernize the text of the Agreement; and

Phase 3: Once there is a decision made by the Commission on the institutional link with FAO, adapt the agreement, if necessary, seeking guidance from TCPR as required.
4. To prepare a report (including text) for the Technical Committee on Performance Review presenting the results of the each work phase.

A consultant was engaged to propose language to modernize the text of the Agreement, taking into account, in particular, the convention texts from IOTC, ICCAT, SPRFMO and WCPFC, and the results of the gaps analysis (phase 1 of the work). The draft agreement (completing Phase 2) has two sections, with text reflecting (i) the current IOTC Agreement amended in track changes (as an FAO body) and (ii) a new agreement/convention outside FAO (Appendix 1).

RECOMMENDATION/S

That the TCPR:

- 1) **NOTE** paper IOTC–2019-TCPR02-03 which provides the TCPR with proposed language to modernize the text of the Agreement.
- 2) **RECOMMEND** any changes to be made to the text prior to it being submitted to the Commission.

APPENDIX 1

Consultant report on the IOTC Agreement

IOTC Agreement – amendments and replacement options

I Background

The Panel of the 2nd IOTC Performance Review in paragraph 80 of its report agreed that the IOTC Agreement needs to be amended or replaced in order to incorporate modern fisheries management principles, such as the precautionary approach, ecosystem based approaches, inclusions of highly-migratory species caught in IOTC fisheries, protection of marine biodiversity, reducing the harmful impacts of fishing on marine environment and to allow the full participation of all fishing players. The Panel noted that the weaknesses and gaps are, or have a potential to be, major impediments to the effective and efficient functioning of the Commission and its ability to adopt and implement measures aimed at long-term conservation and sustainable exploitation of stocks, according to modern fisheries management instruments. Consequently it was recommended that the Commission establish an ad-hoc Working Party on the Modernisation of the IOTC Agreement.

Following the endorsement of the recommendations of the Performance Review in 2016, the Commission formed the Technical Committee on Performance Review (TCAC), which was tasked with, inter alia, to develop a new text of the IOTC Agreement. The TCAC established in February 2018 a drafting group that shall develop proposed language for the IOTC Agreement taking into account modern principles of fisheries management.

The work shall be undertaken in three phases. The first phase was to review, confirm and further identify the gaps in the IOTC Agreement in order to take account of the principles of modern fisheries management using the report and supporting documents prepared in the context of the 2nd Performance Review as a starting point. In August 2018 such an assessment was provided to the TCAC, comparing provisions of the IOTC Agreement with those of other treaties of regional fisheries management organizations (RFMOs). The assessment also included a summary analysis of the IOTC Agreement against the UN Fish Stocks Agreement (UNFSA). Topics addressed in the comparison were precautionary approach, ecosystem considerations, membership/non-parties, decision making/objection procedures, dispute settlement procedures, capacity building/assistance to developing States, monitoring, control and surveillance (including port State and flag State duties), and transparency.

Second phase of the work is to propose language to modernize the text of the IOTC Agreement, while phase three is conditioned a decision by the Commission on the institutional link with the FAO. Thus this report contains two options, i.e. one with amended text to the current IOTC Agreement (as an FAO body) and another which contains a new treaty outside the FAO.

II Amendments to the current IOTC Agreement

To be in line with modern principles for fisheries management, the assessment in phase one indicated that amendments to the IOTC Agreement would be required concerning the preamble, objective,

general principles, functions of the Commission, decision-making, monitoring, control and surveillance, non-members, recognition of developing States, and dispute settlement. Such amendments are included in the draft set out in Appendix A.

There are no suggested amendments related to the current institutional link between IOTC and the FAO. Assuming that IOTC continues as an Article XIV body under the FAO Constitution, it might, however, be appropriate to modify some of the provisions concerning administrative, financial and budgetary issues, taking into account those amendments to the IOTC Agreement proposed by the 3rd special session of IOTC (in May 2006)

The draft amendments do not include any option to address the possible formal involvement by fishing entities in the work of the Commission. However, it might be useful to examine whether the approach taken in the most recent RFMO treaties (i.e. the South Pacific Regional Fisheries Management Organization and the North Pacific Fisheries Commission), or similar means, could be a way forward for IOTC.

Below are some explanations and comments to the draft amendments in Appendix A.

Preamble

The preamble explains the purpose of the Agreement and underlying philosophy. The draft amendments include references to relevant international instruments and to some of the modern principles for fisheries management.

Article I. Use of terms

The current IOTC Agreement does not contain a provision on terms, but some terms are located in various provisions throughout the text. A single provision is useful as it provides a uniform understanding of these terms in all work of the Commission, and those used in the current Agreement are moved to a new Article I. The terms defined should be limited to those required to facilitate the interpretation and understanding of the Agreement. Thus some additional terms are included in Article I. The suggested definitions on “fishing”, “fishing related activities”, “illegal, unreported and unregulated fishing”, and “vessel” are all copied from the FAO Port State Measures Agreement, which is the most recent global binding instrument concerning fisheries management, and could thus be regarded as the current standards.

Article III. Objective

All modern RFMO instruments contain provisions stating their objectives. The objective of the current Agreement is a part of Article II, but it is more appropriate to create a stand-alone provision for this purpose. The amendments to the current objective aim at taking due account of the ecosystem approach by striking a balance between utilization of fishery resources and the protection of the environment.

Article IV. Area of application

It is suggested to change from “competence” to “application”, which is the common term used in most other RFMO treaties. It is also suggested to move current Article VI, paragraph 6 to this provision as they are closely interlinked.

It is proposed to remove current Article III as the content is now intended to be covered by the term “fishery resources” in draft Article I. Furthermore, if required, it would be more appropriate for the Commission to adopt a list of species.

Article V. Coastal States rights

No amendments to current Article XVI.

Article VI. Compatibility

Article 7 of the UNFSA requires States to establish measures for highly migratory fish stocks that are compatible for the high seas and national waters. The draft provision is based on those contained in other RFMO treaties, for example the Convention on the Conservation and management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

Article VII. Membership

It is suggested to remove the reference to “the International Atomic Energy Agency” as it seems irrelevant in this context. The draft also includes some changes in line with other proposed amendments.

Article VIII. General principles

The current Agreement does not contain general principles. All recent international instruments contain provisions on general principles, and such an article is included in the draft. Those principles would apply to all Contracting Parties, regardless of any specific decision or recommendation by the Commission. The provision seeks to, when conducting fishing or fishing related activities taking due account of protection, conservation as well as sustainable use of the marine ecosystem. Many of the draft principles are drawn from relevant international instruments such as Article 6 of the FAO Code of Conduct for Responsible Fisheries and Article 5 of the UNFSA, as well as other RFMO treaties.

Article IX. Functions of the Commission

The current Article V of the Agreement contains the functions and responsibilities of the Commission, which have been modified to be in line with other draft amendments. The content of current paragraph 2(b) has been addressed in a stand-alone provision on “Special requirements of developing States Contracting Parties”, see draft Article XXII.

The draft amendments include an additional list of Commission functions, including those related to conservation and management of fishery resources relevant to fishing and fishing related activities, which are reflecting the current state of art. In addition to a general reference to such measures, the Commission may determine catch and effort levels and extent of participation, adopt measures concerning data, adopt measures to combat IUU fishing and establish cooperative MSC mechanisms.

Article X. Sessions of the Commission

No amendments.

Article XI Subsidiary bodies

Current Article XII deals with subsidiary bodies. It requires the establishment of a permanent Scientific Committee. The Agreement does not provide any guidance on functions or its tasks nor is there any formal link between the Scientific Committee and the Commission. The Commission may, however, establish sub-commissions to deal with one or more stocks covered by the IOTC Agreement, which are mandated to keep under review and gather information, assess and analyse conditions and trends as well as coordinate research and studies on the stocks concerned. Other RFMO treaties contain a general provision establishing permanent subsidiary bodies, as well as participation therein, while their functions are outlined in specific provisions for each of them. It is suggested to follow such an approach in IOTC and that this Article is amended accordingly. It is also proposed to establish a Compliance Committee as a permanent subsidiary body.

Article XII. Scientific Committee

This article sets out the functions of the Scientific Committee drawing from the current Terms of Reference and texts of other RFMOs.

Article XIII. Compliance Committee

This article sets out the functions of the Compliance Committee drawing from the current Terms of Reference and texts of other RFMOs.

Article XIV. Administration

It is suggested to change “Secretary” to “Executive Secretary”, and a few minor other amendments to be in line with other proposals.

Article XV. Finances

The only suggested amendments are editorials.

Article XVI. Decision making

Concerning objection procedures, there is a new proposed requirement that if a Member objects to a decision it must explain its reasons, including alternative measures that Member is going to implement. Such requirements have become common standard in modern RFMO agreements and conventions.

Additional amendments are suggested to be in line with other proposals.

Article XVII. Implementation

The only suggested amendments are to be in line with other proposals.

Article XVIII. Flag State duties

Most RFMOs have recognised the importance of focussing on flag State obligations, and all modern RFMO instruments contain provisions spelling out the crucial duties of parties as flag States. The draft contains a provision in this regard, mostly based on Article 18 of the UNFSA, but also other RFMO treaties.

Article XIX. Port State duties

Port State duties have also gained a lot of attentions in recent years, in particular by FAO Port State Measures Agreement, and the amended draft contains a short provision in this regard. Similar approaches have been taken by other RFMOs

Article XX. Monitoring, compliance and enforcement

Many RFMOs have in their treaties included a separate provision to strengthen the compliance aspect by establishing cooperative mechanism including, among other things, VMS, reciprocal boarding and inspection schemes, non-discriminatory market-related measures and penalty schemes. This draft provision contains suggested amendments in this regard.

Article XXI. Observers

Admission of observers are addressed in current Article VII. Minor amendments are suggested to be in line with other proposals.

Article XXII. Special requirements of developing States Contracting Parties.

Special requirements of Members that are developing States are mentioned in current Article V (b). All modern international instruments recognize the special requirements of developing States in stand.-

alone provisions. The draft contains a provision to address this issue in a more appropriate manner, drawing from part VII of the UNFSA and texts of other RFMO treaties.

Article XXIII. Non-contracting Parties

A draft article on the role of non-contracting parties is also included, which is based on Part IV of the UNFSA and texts of other RFMO treaties.

Article XXIV. Cooperation with other organizations and institutions

Minor amendments are suggested to be in line with other proposals.

Article XXV. Dispute Settlement

Settlement of disputes is addressed in current Article XXIII, which includes a possible conciliation procedure adopted by the Commission. It could be considered whether to include such a procedure as an annex to the Agreement. Such an approach has been taken by some RFMOs (for example the Northwest Atlantic Fisheries Organization, the North-East Atlantic Fisheries Commission, the South Pacific Regional Fisheries Management Organization and the Western Central Pacific Fisheries Commission). Drawing from texts of other RFMOs, some amendments are suggested, including references to binding procedures provided in Part XV of the UN Convention on Law of the Sea and Part VII of UNFSA.

Article XXVI. Headquarters

No amendments to current Article XIV.

Articles XXVII – XXXIII. Final clauses

There are no proposed amendments to the provisions concerning acceptance, entry into force, reservations, amendments, withdrawal, termination or depositary.

III A new IOTC treaty

As mentioned above, the drafting group under TCAC shall also produce a draft of a new treaty outside the FAO. Such a draft treaty (referred to as a Convention in order to distinguish it from the current Agreement) is included in Appendix B.

The design of a new Convention should take into account the need for clarity, simplicity and flexibility. The structure and the issues addressed in the draft Convention draw on other RFMO treaties, in particular those agreed within the last twenty years, which could be considered as international standards.

Some of the recent RFMO treaties contain quite detailed provisions. In order to respond to changing needs, the details of the Convention would require that rules that are likely to be liable to future modifications should not be expressed in the Convention itself. On the other hand, certain points concerning procedures, rights and obligations have to be included in the Convention in order to create clarity and to avoid disputes. Thus one challenge is to strike the balance between the need for flexibility and the need for safeguarding the rights/obligations of members.

The draft in Appendix B addresses the basic requirements for a modern RFMO instrument, which of course could be expanded on, if desired. The structure and issues addressed are the following: Preamble, Use of Terms, Area of Application, Coastal States' rights, Compatibility, General Principles, Commission, Functions of the Commission, Subsidiary Bodies of the Commission, Scientific Committee, Compliance Committee, Committee on Administrations and Finance, Secretariat, Financial Arrangements, Decision-making, Obligations of Contracting Parties, Duties of the Flag State, Duties of the Port State, Monitoring, Control and Enforcement, Transparency, Cooperation with Other Organizations and Institutions, Recognition of the Special Requirements of Developing State Contracting Parties, Non-Contracting Parties, Dispute Settlement, Relation to other International Instrument, Amendments, Signature, Ratification, Acceptance and Approval, Accession, Entry into force, Reservations and Exceptions, Annex, Withdrawal, and Depositary. The draft also includes an Annex concerning fishing entities.

Most of the content, including text proposals of each provision are in essence drawn from other RFMO treaties and should be self-explanatory. The draft contains the possible formal involvement of a fishing entity in the work of the Commission, see the draft Article 7, paragraph 3 and the draft Annex. As mentioned above this is the same approach as taken by the South Pacific Regional Fisheries Management Organization (adopted in 2009) and the North Pacific Fisheries Commission (adopted in 2012).

The draft Article 27 (Signature) and the draft Article 30 (Entry into force) address a possible way of replacing the current IOTC Agreement with the new IOTC Convention.

The draft Convention contains some markings, which are related to numbers (days, months, years) to be agreed upon.

Appendix A

DRAFT AMENDMENTS TO
THE AGREEMENT FOR THE ESTABLISHMENT OF THE INDIAN OCEAN TUNA
COMMISSION

PREAMBLE

The Contracting Parties,

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

Determined to ensure the long-term conservation and sustainable use of living marine resources in the Indian Ocean,

Recalling relevant provisions of the United Nations Convention on the Law of the Sea of 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995, the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1993, and the FAO Agreement on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing of 2009,

Taking into account the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of United Nations in 1995 and related instruments adopted by the Food and Agriculture Organization Conference,

Recognizing the economic and social benefits deriving from sustainable use of highly migratory fish stocks in the Indian Ocean,

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 use and exploitation of highly migratory fish stocks,

Mindful that effective conservation and management measures must be based on the best scientific information available and on the application of the precautionary approach and an ecosystem approach to fisheries management,

Determined to cooperate effectively to prevent, deter and eliminate illegal, unreported and unregulated fishing,

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

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

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

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

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

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

Have agreed as follows:

Article I. USE OF TERMS *(new)*

For the purposes of this Agreement

- (a) **“1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;**
- (b) **“1995 Agreement” means the Agreement for the Implementation of the Provisions of the United Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;**
- (c) **“Area” is the area of application described in Article IV;**
- (d) **“Commission” refers to the Indian Ocean Fisheries Commission established pursuant to Article II;**
- (e) **“Director-General” refers to the Director-General of FAO;**
- (f) **“Executive Secretary” refers to the executive secretary of the Commission;**
- (g) **“FAO” refers to the Food and Agriculture Organization of the United Nations;**
- (h) **“fishery resources” means all species of highly migratory fish stocks that occur in the Area, whether processed or not;**

- (i) **“fishing” means searching for, attracting, locating, catching, taking or harvesting of fishery resources or any activity which can reasonably be expected to result in attracting, locating, catching, taking or harvesting of fishery resources;**
- (j) **“fishing related activities” means any operation in support of, or in preparation for fishing activities, including landing, packaging, processing, transshipping or transporting of fish, as well as provisioning of personnel, fuel, gear and other supplies;**
- (k) **“illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;**
- (l) **“Member” means any State and regional economic integration organization comprising the Commission pursuant to Article V;**
- (m) **“regional economic integration organization”** (*current Article VI(a)(iii)*) means a regional economic integration organizations of which any State has transferred competence over matters within the purview of this Agreement;
- (n) **“vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.**

Article II. ESTABLISHMENT (*current Article I*)

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

Article III. OBJECTIVE (*new*)

(*current Article V, paragraph 1*) The Commission shall promote cooperation among its Members with a view to ensuring **the long-term conservation and sustainable use of fishery resources, and, in doing so, to safeguard the marine ecosystems in which these resources occur and development takes place** through appropriate management, the conservation and optimum utilization of ~~stocks~~ **fishery resources** ~~covered by this Agreement~~ and encouraging sustainable development of fisheries based on such ~~stocks~~ **resources**

Article IV. AREA OF ~~COMPETENCE~~ **APPLICATION** (*current Article II*)

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

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

~~Article V. SPECIES AND STOCKS~~

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

Article V. COASTAL STATES' RIGHTS (current Article XVI)

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

Article VI. COMPATABILITY (new)

The conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible, in order to ensure the conservation and management of fishery resources covered by this Agreement.

Article VII. MEMBERSHIP (current Article IV)

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

(a) that are:

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

(ii) States or Associate Members whose vessels engage in fishing **or fishing related activities** in the Area ~~for stocks covered by this Agreement~~; or

(iii) regional economic integration organizations ~~of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement~~; and

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

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

(a) are

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

(ii) States whose vessels engage in fishing **or fishing related activities** in the Area ~~for stocks covered by this Agreement~~; and

(b) have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of acceptance in accordance with paragraph 2 of Article **XXVII**.

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

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

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

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

Article VIII. GENERAL PRINCIPLES *(new)*

In giving effect to the objective of this Agreement, the Contracting Parties shall:

- (a) **promote the long-term sustainability and optimum utilization of fishery resources;**
- (b) **adopt conservation and management measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;**
- (c) **apply the precautionary approach in accordance with Article 6 of the 1995 Agreement;**
- (d) **take due account of the impact of fishing activities on species belonging to the same ecosystem or dependent upon or associated with the target stocks, and in doing so, adopt measures to minimize harmful impacts;**
- (e) **take due account of the need to preserve marine biological diversity;**
- (f) **prevent or eliminate overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources;**
- (g) **ensure that complete and accurate data concerning fishing and fishing related activities are collected and shared among them in a timely manner;**
- (h) **take due account of the need to minimize pollution and waste originating from fishing activities as well as minimize discards, catch by lost or abandoned gear, catch of species not subject to a directed fishery and impacts on associated or dependent species; and**

- (i) make best efforts to effectively implement all decisions of the Commission, including imposing penalties for violations that are of appropriate severity to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities.

Article IX. OBJECTIVES, FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSION (*current Article V*)

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

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

(a) ~~to~~ **regularly** keep under review the conditions and trends of the stocks **living marine resources** and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the **fishery resources** stocks and to fisheries based on the stocks covered by this Agreement;

(b) ~~to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by this Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries;~~

(b) (*current sub-paragraph c*) ~~to~~ adopt, in accordance with Article **XVI** and on the basis of **the best** scientific evidence **available**, conservation and management measures, ~~to ensure the conservation of~~ **for** the **fishery resources** stocks covered by this Agreement and to promote the objective of their optimum utilization throughout the Area; **including:**

(i) where necessary, for species belonging to the same ecosystem as, or associated with or dependent upon, fishery resources; and

(ii) minimize impacts of fishing on living marine resources and their ecosystems

(c) determine, when appropriate, total allowable catch, or total allowable level of effort, and where necessary, the nature and extent of participation in fishing;

(d) adopt measures for the collection, submission, verification, storing and dissemination of data and information;

(e) adopt measures and take actions to prevent, deter and eliminate illegal, unreported and unregulated fishing;

(f) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance, compliance and enforcement, including sanctions such as non-discriminatory market-related measures;

(g) promote the development and use of electronic means to facilitate communication and exchange of data and information among Contracting Parties;;

(h) regularly review the implementation of decisions into national legislation;

(i) promote and coordinate, and as appropriate, undertake scientific research and development activities;

(j) (current sub-paragraph d) ~~to~~ keep under review the economic and social aspects of the fishing eries and fishing related activities based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;

(k) (current sub-paragraph b) ~~to~~ encourage, recommend, and coordinate research and development activities in respect of the stocks, and fishing eries and fishing related activities covered by this Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fishing ies and fishing related activities and the special interests and needs of Members in the region that are developing countries;

(l) (current paragraph e) ~~to~~ consider and approve its programme and ~~autonomous~~ budget, as well as the accounts for the past budgetary period;

(m) (current paragraph f) to transmit to the Director-General of FAO (hereinafter referred to as the "Director- General") reports on its activities, programme, accounts and autonomous budget and on such other matters as may be appropriate for action by the Council or the Conference of FAO;

(n) (current paragraph g) ~~to~~ adopt its own Rules of Procedure, Financial Regulations and other internal administrative regulations as may be necessary to carry out its functions; and

(o) (current paragraph h) ~~to~~ carry out such other activities as may be necessary to fulfil its objectives and general principles of this Agreement. as set out above.

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

Article X. SESSIONS OF THE COMMISSION (current Article VI)

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

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

3. The Commission may adopt and amend, as required, its own Rules of Procedure by a two-thirds majority of its Members, which Rules shall not be inconsistent with this Agreement or with the Constitution of FAO.
4. The Chairperson of the Commission shall convene an annual regular session of the Commission.
5. Special sessions of the Commission may be convened by the Chairperson of the Commission at the request of at least one-third of its Members.
6. The Commission shall elect its Chairperson and no more than (two) Vice-Chairpersons, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than four years in succession. In electing the Chairperson and the Vice-Chairpersons the Commission shall pay due regard to the need for an equitable representation from among the Indian Ocean States.
7. The Commission may adopt and amend, as required, the Financial Regulations of the Commission by a two-thirds majority of its Members, which Financial Regulations shall be consistent with the principles embodied in the Financial Regulations of FAO. The Financial Regulations and amendments thereto shall be reported to the Finance Committee of FAO which shall have the power to disallow them if it finds that they are inconsistent with the principles embodied in the Financial Regulations of FAO.
8. In order to ensure close cooperation between the Commission and FAO, FAO shall have the right to participate without vote in all meetings of the Commission and subsidiary bodies established in accordance with ~~paragraph 5 of Article XI XII.~~

Article XI. SUBSIDIARY BODIES (*current Article XII*)

1. The Commission shall establish a ~~permanent~~ Scientific Committee **and a Compliance Committee.**
- 2. Each Member of the Commission shall be entitled to appoint one representative to the Scientific Committee and one representative to the Compliance Committee who may be accompanied by alternate representatives and advisors.**
- ~~2. The Commission may establish sub-commissions to deal with one or more of the stocks covered by this Agreement.~~
- ~~3. Such sub-commissions shall be open to Members of the Commission which are coastal States lying on the migratory path of the stocks concerned in the sub-commission or are States whose vessels participate in the fisheries of these stocks.~~
- ~~4. A sub-commission shall provide a forum for consultation and cooperation on matters related to the management of the stocks concerned and in particular: (a) to keep under review the stocks concerned and to gather scientific and other relevant information relating to the stocks concerned;~~
- ~~(b) to assess and analyse the conditions and trends of the stocks concerned;~~
- ~~(c) to coordinate research and studies of the stocks concerned;~~
- ~~(d) to report to the Commission on its findings;~~
- ~~(e) to propose such recommendations for action by the Members of the Commission as may be appropriate, including action to obtain necessary information relating to the stocks and proposals for conservation and management measures;~~

(f) to consider any matter referred to it by the Commission.

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

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

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

Article XII. SCIENTIFIC COMMITTEE *(new)*

The Scientific Committee shall provide advice to the Commission on the technical and scientific basis for the conservation and management of fishery resources, including biological and environmental aspects, and, shall in particular:

(a) assess information provided by Contracting Parties and relevant organizations, institutions or programmes on catches, fishing effort, fleet capacity and other relevant data;

(b) assess status and trends of the fishery resources;

(c) assess the impacts of fishing on the fisheries resources and species belonging to the same ecosystem or dependent upon or associated with the target stocks;

(d) identify and reinforce cooperative research programmes and coordinate their implementation;

(e) transmit advice and reports to the Commission regarding conservation and management measures and research; and

(f) undertake such other functions or responsibilities as may be conferred on it by the Commission.

Article XIII. COMPLIANCE COMMITTEE *(new)*

The Compliance Committee shall:

(a) review compliance with conservation and management measures adopted by the Commission, including those related to monitoring, control, surveillance and enforcement, and make such advice and recommendations to the Commission as may be necessary to ensure their effectiveness;

(b) provide such other information, technical advice and recommendations as it considers appropriate or as may be requested by the Commission relating to the implementation and

compliance with provisions of this Agreement and the conservation and management measures adopted by the Commission;

(c) review the implementation of any cooperative measures for monitoring, control and surveillance and enforcement adopted by the Commission and provide advice and recommendations to the Commission in this regard;

(d) monitor, review and analyse information pertaining to fishing and fishing related activities of non- contracting parties and their vessels that are presumed to undermine the objectives of this Agreement, and recommend actions to be taken by the Commission to combat such activities; and

(e) undertake other functions or responsibilities as may be conferred on it by the Commission.

Article XIV. ADMINISTRATION *(current article VIII)*

1. The **Executive** Secretary of the Commission (~~hereinafter referred to as the “Secretary”~~) shall be appointed by the Director-General with the approval of the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Members of the Commission. The staff of the Commission shall be appointed by the **Executive** Secretary and shall be under the **Executive** Secretary’s direct supervision. The **Executive** Secretary and staff of the Commission shall be appointed under the same terms and conditions as staff members of FAO; they shall, for administrative purposes, be responsible to the Director-General.

2. The **Executive** Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. The **Executive** Secretary shall also act as **Executive** Secretary to ~~other~~ subsidiary bodies established by the Commission, as required.

3. The expenses of the Commission shall be paid out of its autonomous budget except those relating to such staff and facilities as can be made available by FAO. The expenses to be borne by FAO shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of FAO in accordance with the General Rules and the Financial Regulations of FAO.

4. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission, its **subsidiary bodies** ~~commissions and its committees~~, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. The expenses of experts invited by the Commission to attend, in their individual capacity, meetings of the Commission or its **subsidiary bodies** ~~commissions or committees~~ shall be borne by the budget of the Commission.

Article XV. FINANCES *(current Article XIII)*

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

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

3. Contributions shall be determined in the following manner:

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

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

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

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

~~5.4~~ Contributions shall be payable in freely convertible currencies unless otherwise determined by the Commission with the concurrence of the Director-General.

~~6.5~~ The Commission may also accept donations and other forms of assistance from organizations, individuals and other sources for purposes connected with the fulfilment of any of its functions.

~~7.6.~~ Contributions and donations and other forms of assistance received shall be placed in a Trust Fund administered by the Director-General in conformity with the Financial Regulations of FAO.

~~8.7~~ A Member of the Commission which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member.

~~Article XVI. PROCEDURES CONCERNING CONSERVATION AND MANAGEMENT MEASURES-DECISION MAKING~~ (current Article IX)

~~1. Subject to paragraph 2,~~ 1. The Commission may, by a two-thirds majority of its Members present and voting, adopt conservation and management measures **pursuant to Article IX, paragraphs b-f,** binding on Members of the Commission in accordance with this Article.

~~2. Conservation and management measures for stocks for which a sub-commission has been established under paragraph 2 of Article XII, shall be adopted upon the proposal of the sub-commission concerned.~~

2. The **Executive** Secretary shall, without undue delay, notify the Members of the Commission of any conservation and management measures adopted by the Commission.

3. Subject to paragraphs 4 and 5, conservation and management measures adopted by the Commission under paragraph 1, shall become binding on Members 120 days from the date specified in the **Executive** Secretary's notification or on such other date as may be specified by the Commission.

4. Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 3, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure shall not be bound thereby. **The objection shall include a written explanation of reasons**

for objecting, and where appropriate, its proposals for alternative conservation and management measures that the Member is going to implement. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.

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

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

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

Article XVII. IMPLEMENTATION *(current Article X and partly Article XI)*

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

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

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

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

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

Article XVIII. FLAG STATE DUTIES *(new)*

1. Each Contracting Party shall take all necessary measures to ensure that vessels entitled to fly its flag:

(a) comply with the provisions of this Agreement and conservation and management measures adopted by the Commission; and

(b) do not conduct unauthorized fishing or fishing related activities within waters under national jurisdiction of any member.

2. Each Contracting Party shall:

(a) authorize the use of vessels entitled to fly its flag only where it is able to exercise effectively its responsibilities in respect of the vessels under this Agreement and in accordance with international law;

(b) maintain a register of vessels entitled to fly its flag and authorized for fishing or fishing related activities, ensure that such information as may be specified by the Commission is entered into that register, and exchange the information in accordance with such procedures as may be specified by the Commission;

(c) in accordance with procedures adopted by the Commission, investigate immediately and report fully on actions taken in response to any alleged violation by vessels entitled to fly its flag of provisions of this Agreement or any conservation and management measures adopted by the Commission; and

(d) ensure that penalties applicable for such violations are of an appropriate severity to secure compliance, discourage further violations and deprive offenders of the benefits accruing from such activities.

Article XIX. PORT STATE DUTIES *(new)*

Each Contracting Party shall take all measures and actions, to the extent possible, necessary to implement port State measures in accordance with international instruments and decisions by the Commission.

Article XX. MONITORING, COMPLIANCE AND ENFORCEMENT *(new)*

The Commission shall establish appropriate cooperative mechanisms for effective monitoring, control and surveillance of fishing and fishing related activities and to ensure compliance with this Agreement and the adopted conservation and management measures including, *inter alia*:

(a) a record of vessels authorised to conduct fishing and fishing related activities in the Area;

(b) requirements for the reporting of vessel movements and activities by a satellite vessel monitoring system or other means that shall be designed to ensure the integrity and security of

near real time transmissions, and such other systems as may be agreed by the Commission from time to time;

(c) inspection programmes both at sea and in port, including joint or reciprocal boarding and inspection schemes;

(d) reporting obligations on violations detected, progress and outcomes of investigations, and enforcement actions taken;

(e) lists of vessels having engaged in illegal, unreported and unregulated fishing, including actions to be taken against vessels on such lists;

(f) a process, including through the Compliance Committee, to examine cases of non-compliance with any recommendation adopted by the Commission and, as appropriate, determine sanctions;

(g) sanctions consistent with international law to be applied by the Commission in cases of non-compliance with recommendations of the Commission as determined pursuant to paragraph (f) of this Article, including non-discriminatory market-related measures; and

(h) guidelines for penalties and/or sanctions to be applied by the Commission and/or its members.

Article XIII. INFORMATION

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

Article XXI. OBSERVERS *(current Article VII)*

1. Any Member or Associate Member of FAO that is not a Member of the Commission may, upon its request, be invited to be represented by an observer at sessions of the Commission. It may submit memoranda and participate without vote in the discussions.

~~2.1~~ States which, while not Members of the Commission, nor Members or Associate Members of FAO, are Members of the United Nations, any of its Specialized Agencies ~~or the International Atomic Energy Agency~~ may, upon request and subject to the concurrence of the Commission through its Chairperson and to the provisions relating to the granting of observer status to nations adopted by the Conference of FAO, be invited to attend sessions of the Commission as observers.

~~3.2~~ The Commission may invite intergovernmental or, on request, non-governmental organizations having special competence in the field of activity of the Commission to attend such of its meetings as the Commission may specify.

Article XXII. SPECIAL REQUIREMENTS OF DEVELOPING STATES CONTRACTING PARTIES *(new)*

1. The Commission shall give full recognition to the special requirements of developing States Contracting Parties to this Agreement in relation to conservation and management of fishery resources and to the development of fishing and fishing related activities.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures, the Commission shall take into account the special requirements of developing State Contracting Parties, in particular:

(a) the vulnerability of such developing States Contracting Parties which are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or part thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by subsistence, and artisanal fishers small-scale and fish workers; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing States Contracting Parties.

3. The Contracting Parties shall cooperate either directly or through the Commission for the purposes set out in this Article, which may include provision of financial assistance, assistance to human resource development, technical assistance, transfer of technology, including joint venture arrangements, and advisory and consultative services. Such assistance shall, *inter alia*, be directed towards:

(a) improved conservation and management of fishery resources through collection, submission, verification, storing and dissemination of data;

(b) stock assessment and scientific research;

(c) development of fishing activities; and

(d) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level and access to technology and equipment.

Article XXIII. NON-CONTRACTING PARTIES *(new)*

1. Contracting Parties shall exchange information with respect to vessels engaged in fishing or fishing related activities in the Area that are flying the flags of non-contracting parties to this Agreement.

2. Contracting Parties shall, individually or collectively, take measures consistent with this Agreement and international law to deter the activities of such vessels, which undermine the effectiveness of applicable conservation and management measures, and shall report to the Commission any action taken in response to fishing or fishing related activities in the Area by non-contracting parties.

3. Contracting Parties shall, individually or collectively, draw the attention of any non-contracting party to this Agreement to any activity, which in the opinion of the Contracting Party or Contracting Parties negatively affects the implementation of the objective of this Agreement.

4. Contracting Parties shall, individually or collectively, request non-contracting parties to this Agreement whose vessels are engaged in fishing or fishing related activities in the Area to become parties to this Agreement or to cooperate fully in the implementation of conservation and management measures adopted by the Commission. Such cooperating non-contracting parties may enjoy benefits from participation in fishing or fishing related activities commensurate with their commitments to comply with conservation and management measures established under this Agreement.

Article XXIV. COOPERATION WITH OTHER ORGANIZATIONS AND INSTITUTIONS *(current Article XV)*

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

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

Article XXV. ~~INTERPRETATION AND SETTLEMENT OF DISPUTES~~ *(current Article XXIII)*

1. Contracting Parties shall cooperate in order to prevent disputes.

2. In the event of a dispute between two or more Contracting Parties concerning the interpretation or application of this Agreement, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

~~3 Any **Where a** dispute regarding the interpretation or application of this Agreement, if **is** not settled by the Commission **the means set out in paragraph 2, they may jointly** shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. **If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.**~~

4. Where a dispute is not resolved through the means set out in paragraphs 2 or 3, such dispute shall, at the request of any party to the dispute, be referred to procedures for settlement of disputes provided in Part XV of the 1982 Convention or in Part VII of the 1995 Agreement.

Article XXVI HEADQUARTERS (*current Article XIV*)

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

Article XXVII. ACCEPTANCE (*current Article XVII*)

1. Acceptance of this Agreement by any Member or Associate Member of FAO shall be effected by the deposit of an instrument of acceptance with the Director-General.
2. Acceptance of this Agreement by any State referred to in paragraph 2 of Article **VII** shall be effected by the deposit of an instrument of acceptance with the Director-General. Acceptance shall become effective on the date on which the Commission approves the application for membership.
3. The Executive Secretary shall inform all Members of the Commission, all Members of FAO and the Secretary-General of the United Nations of all acceptances that have become effective.

Article XXVIII. ENTRY INTO FORCE (*current Article XVIII*)

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

Article XXIX. RESERVATIONS (*current Article XIX*)

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

Article XXX. AMENDMENT (*current Article XX*)

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

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

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

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

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

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

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

Article XXXI. WITHDRAWAL (*current Article XXI*)

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

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

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

4. Withdrawal may also take place as provided for under paragraph 4 ~~3~~ of Article ~~IV~~VII.

Article XXXII. TERMINATION (*current Article XXII*)

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

Article XXXIII DEPOSITARY (*current Article XXIV*)

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

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-Member States as may become party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO which has accepted this Agreement and any non-Member State which has been admitted to membership in the Commission of:
 - (i) the application of a non-Member State to be admitted to membership in the Commission;
 - (ii) proposals for the amendment of this Agreement or of the Annexes thereto;
- (d) inform each Member and Associate Member of FAO and any non-Member States as may become party to this Agreement of:
 - (i) the deposit of instruments of acceptance in accordance with Article ~~XVII~~ XXVII;
 - (ii) the date of entry into force of this Agreement in accordance with Article ~~XVIII~~ XXVIII;
 - (iii) reservations made to this Agreement in accordance with Article ~~XIX~~ XXIX;
 - (iv) the adoption of amendments to this Agreement in accordance with Article ~~XX~~ XXX;
 - (v) withdrawals from this Agreement pursuant to Article ~~XXI~~ XXXI; and
 - (vi) termination of this Agreement in accordance with Article ~~XXII~~ XXXII.

Annex A

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

Appendix B**DRAFT****Convention for the establishment of the Indian Ocean Tuna Commission (IOTC)*****Preamble***

The Contracting Parties,

Determined to ensure the long-term conservation and sustainable use of living marine resources in the Indian Ocean,

Recalling relevant provisions of the United Nations Convention on the Law of the Sea of 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995, the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1993, and the FAO Agreement on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing of 2009,

Taking into account the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of United Nations in 1995 and related instruments adopted by the Food and Agriculture Organization Conference,

Recognizing the economic and social benefits deriving from sustainable use of highly migratory fish stocks in the Indian Ocean,

Further recognizing that under international law States are required to cooperate in the conservation and management of highly migratory fish stocks,

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 use and exploitation of highly migratory fish stocks,

Mindful that effective conservation and management measures must be based on the best scientific information available and on the application of the precautionary approach and an ecosystem approach to fisheries management,

Determined to cooperate effectively to prevent, deter and eliminate illegal, unreported and unregulated fishing,

Recognizing the special requirements of developing States to assist them to participate effectively in the conservation, management of highly migratory fish stocks,

Convinced that the long-term conservation and sustainable use of highly migratory fish stocks in the Indian Ocean, and the protection of the marine ecosystems in which those resources occur are best achieved through international cooperation within the Indian Ocean Fisheries Commission,

Have agreed as follows:

Article 1

Use of terms

For the purposes of this Convention

- (a) “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;
- (b) “1993 Agreement” means Agreement for the Establishment of the Indian Ocean Tuna Commission of 25 November 1993;
- (c) “1995 Agreement” means the Agreement for the Implementation of the Provisions of the United Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;
- (d) “Commission” refers to the Indian Ocean Fisheries Commission established pursuant to Article 7;
- (e) “Convention Area” is the area of application described in Article 3;
- (f) “fishery resources” means all species of highly migratory fish stocks that occur in the Convention Area, whether processed or not;
- (g) “fishing” means searching for, attracting, locating, catching, taking or harvesting of fishery resources or any activity which can reasonably be expected to result in attracting, locating, catching, taking or harvesting of fishery resources;
- (h) “fishing related activities” means any operation in support of, or in preparation for fishing activities, including landing, packaging, processing, transshipping or transporting of fish, as well as provisioning of personnel, fuel, gear and other supplies;
- (i) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- (j) “member” means any State and regional economic integration organization comprising the Commission pursuant to Article 7;

- (k) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Convention, including the authority to make binding decisions on its member States in respect of those matters; and
- (l) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

Article 2

Objective

The objective of this Convention is to ensure the long-term conservation and sustainable use of fishery resources and, in doing so, to safeguard the marine ecosystems in which these resources occur and development takes place.

Article 3

Area of application

1 The geographical area of application, hereafter the “Convention Area”, comprises the Indian Ocean and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such areas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.

2 Nothing in this Convention shall constitute recognition of claims or positions of any Contracting Party concerning legal status and extent of waters and zones by any such Contracting Party.

Article 4

Coastal States’ rights

This Convention shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species in areas under its jurisdiction.

Article 5

Compatibility

The conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure the conservation and management of fishery resources covered by this Convention.

Article 6

General principles

In giving effect to the objective of this Convention, the Contracting Parties shall:

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- (a) promote the long-term sustainability and optimum utilization of fishery resources;
 - (b) adopt conservation and management measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;
 - (c) apply the precautionary approach in accordance with Article 6 of the 1995 Agreement;
 - (d) take due account of the impact of fishing activities on species belonging to the same ecosystem or dependent upon or associated with the target stocks, and in doing so, adopt measures to minimize harmful impacts;
 - (e) take due account of the need to preserve marine biological diversity;
 - (f) prevent or eliminate overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources;
 - (g) ensure that complete and accurate data concerning fishing and fishing related activities are collected and shared among them in a timely manner;
 - (h) take due account of the need to minimize pollution and waste originating from fishing activities as well as minimize discards, catch by lost or abandoned gear, catch of species not subject to a directed fishery and impacts on associated or dependent species; and
 - (i) make best efforts to effectively implement all decisions of the Commission, including imposing penalties for violations that are of appropriate severity to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities.

Article 7

The Commission

1 There is hereby established the Indian Ocean Fisheries Commission, hereafter “the Commission”, for the purpose of exercising the functions and discharging the responsibilities set out in this Convention.

2 Each Contracting Party shall be a member of the Commission, and each member shall have one vote.

3 A fishing entity may participate in the work of the Commission in accordance with the Annex. The participation of a fishing entity in the work of the Commission shall not constitute a deviation from accepted application of international law, including the 1982 Convention.

4 Each member shall designate one representative to the Commission who at sessions of the Commission may be accompanied by an alternate representative and advisers.

5 The Commission shall elect a Chairperson and a Vice-Chairpersons from among the members, each of whom shall serve for a term of (xx) years and shall be eligible for re-election but shall not serve

for more than (xx) years in succession in the same capacity. The Chairperson and the Vice-Chairpersons shall be representatives of different members.

6 Meetings of the Commission shall be convened once a year unless the Commission decides otherwise, at a time and location to be decided by the Commission in consultation with the members. The Commission shall hold such other meeting as may be necessary to carry out its functions under this Convention.

7 The principle of cost-effectiveness shall apply to the frequency, duration and scheduling of sessions and other meetings and activities held under the auspices of the Commission.

8 The headquarters of the Commission shall be in (x).

Article 8

Functions of the Commission

The Commission shall, in accordance with its objective and general principles, exercise the following functions:

- (a) regularly review the state of living marine resources;
- (b) adopt conservation and management measures for fishery resources, including:
 - (i) where necessary, for species belonging to the same ecosystem as, or associated with or dependent upon, fishery resources; and
 - (ii) to minimize impacts for fishing activities on living marine resources and their ecosystems.
- (c) determine, when appropriate, total allowable catch, or total allowable level of effort, and where necessary, the nature and extent of participation in fishing activities;
- (d) adopt measures for the collection, submission, verification, storing and dissemination of data and information;
- (e) promote the development and use of electronic means to facilitate communication and exchange of data and information among Contracting Parties;;
- (f) adopt measures and take actions to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- (g) regularly review the implementation of decisions into national legislation;

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- (h) elaborate multiannual management plans for the conservation and management of fishery resources;
 - (i) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance, compliance and enforcement, including sanctions such as non-discriminatory market-related measures;
 - (j) promote and coordinate, and as appropriate, undertake scientific research and development activities;
 - (k) regularly review the socio-economic aspects of the fishing industry, including obtaining and evaluating economic and other data and information relevant to the work of the Commission;
 - (l) promote, coordinate and, as appropriate, strengthen the development of institutional capacity and human resources, particularly through education, training and extension activities in areas of competence of the Commission;
 - (m) enhance communication and consultation with civil society concerned with fishing and fishing related activities;
 - (n) adopt its Rules of Procedure and Financial Regulations and such other internal administrative regulations as may be necessary to carry out its functions;
 - (o) approve the budget and programme of work of the Commission; and
 - (p) exercise any other function as may be necessary for achieving the objective of this Convention.

Article 9

Subsidiary bodies of the Commission

1 There are hereby established as permanent subsidiary bodies of the Commission a Scientific Committee, a Compliance Committee and a Committee on Administration and Finance to provide advice and recommendations to the Commission on matters within their respective areas of competence and carry out such other activities as requested from time to time by the Commission.

2 The Commission may establish such other subsidiary bodies as may be necessary to meet the objective of this Convention. The Commission shall provide specific mandates to any such subsidiary body, which shall include terms of reference, methods of work and reporting requirements.

3 The establishment of such additional subsidiary bodies shall be subject to the availability of necessary funds. Before taking any decision involving expenditure in connection with the establishment of such subsidiary bodies, the Commission shall have before it a report from the Executive Secretary on administrative and financial implications.

4 All subsidiary bodies may establish working groups.

5 Each member shall be entitled to appoint one representative to any subsidiary body who at sessions may be accompanied by alternates, experts and advisers.

6 Members shall provide information relevant to the functions of each subsidiary body in such a way as to enable them to fulfil their responsibilities.

7 Any subsidiary body shall operate under the Rules of Procedure of the Commission unless otherwise decided by the Commission.

Article 10

The Scientific Committee

The Scientific Committee shall provide advice on the technical and scientific basis for the conservation and management of fishery resources, including biological, environmental, social and economic aspects, and, shall in particular:

- (a) assess information provided by Contracting Parties and relevant organizations, institutions or programmes on catches, fishing effort, fleet capacity and other relevant data;
- (b) assess status and trends of the fishery resources;
- (c) assess the impacts of fishing on the fisheries resources and species belonging to the same ecosystem or dependent upon or associated with the target stocks;
- (d) identify and reinforce cooperative research programmes and coordinate their implementation;
- (e) transmit advice and reports to the Commission regarding conservation and management measures and research; and
- (f) undertake such other functions or responsibilities as may be conferred on it by the Commission.

Article 11

The Compliance Committee

The Compliance Committee shall:

- (a) review compliance with conservation and management measures adopted by the Commission, including those related to monitoring, control, surveillance and enforcement, and make such advice and recommendations to the Commission as may be necessary to ensure their effectiveness;
- (b) provide such other information, technical advice and recommendations as it considers appropriate or as may be requested by the Commission relating to the implementation and compliance with provisions of this Convention and the conservation and management measures adopted by the Commission;

- (c) review the implementation of any cooperative measures for monitoring, control and surveillance and enforcement adopted by the Commission and provide advice and recommendations to the Commission in this regard;
- (d) monitor, review and analyse information pertaining to fishing and fishing related activities of non- Contracting Parties and their vessels that are presumed to undermine the objectives of this Convention, and recommend actions to be taken by the Commission to combat such activities; and
- (e) undertake other functions or responsibilities as may be conferred on it by the Commission.

Article 12

The Committee on Administration and Finance

The Committee on Administration and Finance shall:

- (a) review administrative matters relating to the Secretariat and make appropriate recommendations to the Commission;
- (b) review compliance with the Rules of Procedure and the Financial Regulations and make recommendations to the Commission, including as appropriate for amendment of those rules and regulations;
- (c) review the implementation of the previous programme of work and budget, and analyse and make recommendations to the Commission on the draft programme of work and budget; and
- (d) undertake other functions or responsibilities as may be conferred on it by the Commission.

Article 13

Secretariat

1 The Secretariat shall consist of the Executive Secretary, and such staff as may be appointed by him or her and under his or her supervision unless otherwise provided in the Rules of Procedure.

2 The Executive Secretary shall be appointed for a term of (x) years and may be re-appointed for a further term of (x) years.

3 The Executive Secretary functions shall include the following:

- (a) be responsible for the receipt, collection, circulation, drafting and presentation of documents for the Commission sessions and subsidiary bodies;
- (b) maintain contacts with relevant governments, international organizations and institutions;
- (c) provide services to the Commission and its subsidiary bodies to facilitate the execution of their functions; and
- (d) undertake other functions or responsibilities as may be conferred on him or her by the

Commission.

Article 14
Financial arrangements

1 At each regular meeting, the Commission shall adopt, by consensus, an annual budget for each of the next two years. The Executive Secretary shall transmit draft budgets for each of those years to the members. In the event that the Commission cannot reach consensus on the adoption of an annual budget for any given year, the budget for the previous year shall be carried forward for that year.

2 Each member shall undertake to contribute annually its share of the budget in accordance with a scale of contributions determined in accordance with a scheme, which the Commission shall adopt or amend by consensus. The scheme shall be set out in the Financial Regulations.

3 The Executive Secretary shall notify each member of the amount of its contribution. Contributions shall be paid not later than (x) months after the date of that notification.

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

4 A member of the Commission that has not paid its contribution in full for two consecutive years shall not be entitled to participate in the making of decisions by the Commission until it has discharged its financial obligations to the Commission.

5 The financial affairs of the Commission shall be audited annually by external auditors to be selected by the Commission.

Article 15
Decision-making

1 As a general rule, decisions by the Commission shall be taken by consensus. For the purposes of the Article, “consensus” means the absence of any formal objection made at the time the decision was taken.

2 If the Chairperson considers that all efforts to take decisions by consensus have been exhausted, the Commission shall take decisions by a simple majority of its member present and voting, with the exception of binding decisions provided in paragraphs 3 to 8, or unless otherwise provided in this Convention.

3 The Commission may take decisions that are binding on members relating to conservation and management measures, which shall be taken by two-thirds majority of the votes of all members present and casting affirmative or negative votes, provided that no vote shall be taken unless there is a quorum of at least two-thirds of the members. Each member shall have one vote.

- 4 Decisions by the Commission shall become binding on members in the following manner:
- (a) the Executive Secretary shall without delay notify the members of decisions taken by the Commission; and
 - (b) subject to paragraph 3, the decision shall become binding upon all members (xx) days from the date specified in that notification.

5 A member may present to the Executive Secretary an objection to a decision within (xx) days from the date specified under sub-paragraph 4(b). In that event the decision shall not become binding on that member.

6 A member which objects shall at the same time provide a written explanation of reasons for objecting, and where appropriate, its proposals for alternative measures which the member is going to implement. The explanation shall specify *inter alia* whether the basis for the objection is that the member considers that the measure is inconsistent with this Convention, the member cannot practicably comply with the measure, the measure unjustifiably discriminates in form or in fact against the member or other special circumstances apply.

7 In the event that objections to a decision are made by more than one-third of the members, the other members shall not be bound by the decision, but shall not preclude any or all of them from giving effect thereto.

8 A member may withdraw an objection at any time and the decision shall then become binding in accordance with sub-paragraph 4(b).

9 The Executive Secretary shall promptly notify all members of:

- (a) the receipt and withdrawal of any objection; and
- (b) the reasoning for the objection and alternative measures pursuant to paragraph 6.

10 Any member that is bound by a decision in accordance with this Article has a duty to implement such decision in its national laws and procedures upon the entry into force of such decision.

11 In exceptional circumstances as determined by the Executive Secretary in consultation with the Chairperson, when urgent matters require members to take decisions between sessions of the Commission, any rapid means of communication may be used for decision-making with respect to procedural and administrative matters of the Commission, including any of its subsidiary bodies or working parties, other than matters relating to the interpretation of and the adoption of amendments to the Statute of the Commission or its Rules.

Article 16
Obligations of Contracting Parties

1 Each Contracting Party shall provide such information to the Commission and its subsidiary bodies in such a way as to enable the Commission to meet the objective of this Convention and to enable its subsidiary bodies to fulfil their responsibilities.

2 Each Contracting Party shall:

- (a) implement this Convention and conservation and management measures adopted by the Commission, and take all necessary measures to ensure their effectiveness;
- (b) cooperate in furthering the objective of this Convention;
- (c) take all necessary measures to support efforts to prevent, deter and eliminate illegal, unreported and unregulated fishing within the Convention Area; and
- (d) collect, verify and report scientific, technical and statistical data and information required pursuant to this Convention in conformity with standards, rules and procedures established by the Commission.

3 Each Contracting Party shall report annually to the Commission indicating how it has implemented the decisions by the Commission, including providing such relevant legislative and administrative documents as may be required by the Commission.

4 Each Contracting shall, to the greatest extent possible, take measures and cooperate to ensure compliance with decisions by the Commission by its nationals and vessels owned, operated or controlled by its nationals.

Article 17

Duties of the flag State

1 Each Contracting Party shall take all necessary measures to ensure that vessels entitled to fly its flag:

- (a) comply with the provisions of this Convention and conservation and management measures adopted by the Commission; and
- (b) do not conduct unauthorized fishing or fishing related activities within waters under national jurisdiction of any member.

2 Each Contracting Party shall:

- (a) authorize the use of vessels entitled to fly its flag only where it is able to exercise effectively its responsibilities in respect of the vessels under this Convention and in accordance with international law;
- (b) maintain a register of vessels entitled to fly its flag and authorized for fishing or fishing related activities, ensure that such information as may be specified by the Commission is entered into

that register, and exchange the information in accordance with such procedures as may be specified by the Commission;

- (c) in accordance with procedures adopted by the Commission, investigate immediately and report fully on actions taken in response to any alleged violation by vessels entitled to fly its flag of provisions of this Convention or any conservation and management measures adopted by the Commission; and
- (d) ensure that penalties applicable for such violations are of an appropriate severity to secure compliance, discourage further violations and deprive offenders of the benefits accruing from such activities.

Article 18

Duties of the port State

Each Contracting Party shall take all measures and actions, to the extent possible, necessary to implement port State measures in accordance with international instruments and decisions by the Commission

Article 19

Monitoring, compliance and enforcement

The Commission shall establish appropriate cooperative mechanisms for effective monitoring, control and surveillance of fishing and fishing related activities and to ensure compliance with this Convention and the adopted conservation and management measures including, *inter alia*:

- (a) a record of vessels authorised to conduct fishing and fishing related activities in the Convention Area;
- (b) requirements for the reporting of vessel movements and activities by a satellite vessel monitoring system or other means that shall be designed to ensure the integrity and security of near real time transmissions, and such other systems as may be agreed by the Commission from time to time;
- (c) inspection programmes both at sea and in port, including joint or reciprocal boarding and inspection schemes;
- (d) reporting obligations on violations detected, progress and outcomes of investigations, and enforcement actions taken;
- (e) lists of vessels having engaged in illegal, unreported and unregulated fishing, including actions to be taken against vessels on such lists;
- (f) a process, including through the Compliance Committee, to examine cases of non-compliance with any recommendation adopted by the Commission and, as appropriate, determine sanctions;

- (g) sanctions consistent with international law to be applied by the Commission in cases of non-compliance with recommendations of the Commission as determined pursuant to paragraph (f) of this Article, including non-discriminatory market-related measures; and
- (h) guidelines for penalties and/or sanctions to be applied by the Commission and/or its members.

Article 20

Transparency

1 The Commission shall promote transparency in decision-making processes and other activities carried out under this Convention.

2 The Commission may invite intergovernmental or, on request, non-governmental organizations to participate as observers having special competence in the field of activity of the Commission, including its subsidiary bodies, to attend such of its meetings as the Commission may specify.

3 Unless the Commission expressly determines otherwise, observers may attend the plenary sessions of the Commission and participate in the discussions at any subsidiary body sessions which they may be invited to attend upon request. They may submit memoranda but in no case will they be entitled to vote.

Article 21

Cooperation with other organizations and institutions

1 The Commission shall cooperate with other international organizations and institutions in matters of mutual interest.

2 The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with other relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.

Article 22

Recognition of the special requirements of developing State Contracting Parties

1 The Commission shall give full recognition to the special requirements of developing States Contracting Parties to this Convention in relation to conservation and management of fishery resources and to the development of fishing and fishing related activities.

2 In giving effect to the duty to cooperate in the establishment of conservation and management measures, the Commission shall take into account the special requirements of developing State Contracting Parties, in particular:

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- (a) the vulnerability of such developing States Contracting Parties which are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or part thereof;
 - (b) the need to avoid adverse impacts on, and ensure access to fisheries by subsistence, and artisanal fishers small-scale and fish workers; and
 - (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing States Contracting Parties.

3 The Contracting Parties shall cooperate either directly or through the Commission for the purposes set out in this Article, which may include provision of financial assistance, assistance to human resource development, technical assistance, transfer of technology, including joint venture arrangements, and advisory and consultative services. Such assistance shall, *inter alia*, be directed towards:

- (a) improved conservation and management of fishery resources through collection, submission, verification, storing and dissemination of data;
- (c) stock assessment and scientific research;
- (d) development of fishing activities; and
- (e) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level and access to technology and equipment.

Article 23

Non-Contracting Parties

1 The Contracting Parties shall exchange information with respect to vessels engaged in fishing or fishing related activities in the Convention Area that are flying the flags of non-contracting parties to this Convention.

2 The Contracting Parties shall, individually or collectively, take measures consistent with this Convention and international law to deter the activities of such vessels, which undermine the effectiveness of applicable conservation and management measures, and shall report to the Commission any action taken in response to fishing or fishing related activities in the Convention Area by non-contracting parties.

3 The Contracting Parties shall, individually or collectively, draw the attention of any non-contracting party to this Convention to any activity, which in the opinion of the Contracting Party or the Contracting Parties negatively affects the implementation of the objective of this Convention.

4 The Contracting Parties shall, individually or collectively, request non-contracting parties to this Convention whose vessels are engaged in fishing or fishing related activities in the Convention Area to become parties to this Convention or to cooperate fully in the implementation of conservation and management measures adopted by the Commission. Such cooperating non-contracting parties may enjoy benefits from participation in fishing or fishing related activities commensurate with their commitments to comply with conservation and management measures established under this Convention.

Article 24

Dispute settlement

1 The Contracting Parties shall cooperate in order to prevent disputes.

2 If any dispute arises between two or more Contracting Parties concerning the interpretation of this Convention, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. Where a dispute is of technical nature, any party to the dispute may refer the dispute to an ad hoc expert panel established in accordance with the Rules of Procedure adopted by the Commission.

3 Where a dispute is not resolved through the means set out in paragraph 2, such dispute shall, at the request of any party to the dispute, be referred to procedures for settlement of disputes provided in Part XV of the 1982 Convention or in Part VII of the 1995 Agreement.

4 Paragraph 3 shall not affect the status of any Contracting Party in relation to the 1982 Convention or the 1995 Agreement.

Article 25

Relation to other international instruments

1 Nothing in this Convention shall prejudice the rights, jurisdiction and duties of the Contracting Parties under the 1982 Convention or the 1995 Agreement.

2 This Convention shall not alter the rights and obligations of Contracting Parties that arise from other international instruments compatible with this Convention and which do not affect the enjoyment by other Contracting Parties of their rights or performance of their obligations under this Convention.

Article 26

Amendments

1 Any proposal to amend this Convention shall be provided to the Executive Secretary at least (x) days prior to the meeting at which it is proposed to be considered. The Executive Secretary shall promptly transmit the proposal to all members of the Commission.

2 Amendments to this Convention shall be adopted by (x). The text of any adopted amendment shall be transmitted promptly to all Contracting Parties by the Depositary.

3 An amendment shall take effect for all Contracting Parties (x) days after the date of transmittal specified in the notification by the Depositary of receipt of written notification of approval by all Contracting Parties.

4. States or regional economic integration organizations that become Contracting Parties to this Convention after the entry into force of amendments to this Convention shall be considered to be Contracting Party to the Convention as amended.

Article 27

Signature

1 This Convention shall be open for (x) months for signature by:

- (a) Contracting Parties to the 1993 Agreement;
- (b) States not Contracting Party to the 1993 Agreement with a coastline bordering the Convention Area; and
- (c) States and regional economic integration organization that are not Contracting Parties to the 1993 Agreement and whose vessels have fished for fishery resources at any time during the (x) years preceding the adoption of this Convention and that participated in the negotiation of this Convention.

Article 28

Ratification, Acceptance and Approval

This Convention is subject to ratification, acceptance or approval in accordance with their domestic laws and procedures.

Article 29

Accession

This Convention shall be open for accession, after its closure for signature, by any State, regional economic integration organization...

Article 30

Entry into force

1. This Convention shall enter into force (x) months after the deposit with the Depositary of the (x) instrument of ratification, acceptance, approval or accession of the Contracting Parties to the 1993 Agreement that were Contracting Parties to that Agreement on the date this Convention was opened for signature.

2. After the date of entry into force of this Convention, with respect to each State or regional economic integration organization that meets the requirements of Article 25, this Convention shall enter into force for the said State or regional economic integration organization on the (x) day following the deposit of its instrument of ratification, acceptance, approval, or accession.

3. Upon entry into force of this Convention, this Convention shall prevail, as between Contracting Parties to this Convention and the 1993 Agreement, over the 1993 Agreement.

4. Upon entry into force of this Convention, conservation and management measures and other arrangements adopted by the Commission under the 1993 Agreement shall remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to this Convention.

5. Upon entry into force of this Convention, a Contracting Party to the 1993 Agreement that has not yet consented to be bound by this Convention shall be deemed to remain a member of the Commission unless such Contracting Party decides not to remain a member of the Commission by notifying the Depositary in writing prior to the entry into force of this Convention.

6. Upon entry into force of this Convention for all Contracting Parties to the 1993 Agreement, the 1993 Agreement shall be considered as terminated in accordance with relevant rules of international law as reflected in Article 59 of the Vienna Convention on the Law of Treaties.

Article 31

Reservations and Exceptions

No reservations or exceptions may be made to this Convention.

Article 32

Annex

The Annex shall form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Annex.

Article 33
Withdrawal

Any Contracting Party may withdraw from this Convention by giving notice to the Depositary that shall transmit copies of the notice to the other Contracting Parties. The withdrawal shall become effective (x) months after receipt of such a notice by the Depositary.

Article 34
Depositary

The original text of this Convention shall be deposited with....

ANNEX

Fishing Entities

1 After the entry into force of this Convention, any fishing entity whose vessels have fished or intend to fish for fishery resources or undertake fishing related activities may, by a written instrument delivered to the Depositary, express a firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant to this Convention. Such commitment shall become effective (x) days from the receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Depositary. The withdrawal shall become effective (x) after the date of its receipt, unless the notification specifies a later date.

2 Any fishing entity referred to in paragraph 1 may, by written instrument delivered to the Depositary, express its firm commitment to abide the terms of the Convention as it may be amended pursuant to Article (x). This commitment shall be effective from the dates referred to in Article (x) or on the date of receipt of the written communication referred to in this paragraph, whichever is later.

3 A fishing entity that has expressed its firm commitment to abide by the terms of this Convention and comply with conservation and management measures adopted pursuant to this Convention in accordance with paragraph 1 must abide by the obligations of members of the Commission and may participate in the work, including decision-making, of the Commission in accordance with the provisions of this Convention. For the purposes of this Convention, references to the Commission or members of the Commission include such fishing entity.

4 If a dispute involves a fishing entity that has expressed its commitment to be bound by terms of this Convention in accordance with this Annex and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with relevant rules of the Permanent Court of Arbitration

5 The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.