
總統府公報

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中華民國 101 年 11 月 28 日 (星期三)

目 次

壹、總統令

一、公布公約、法律

- (一)南太平洋公海漁業資源養護與管理公約生效日……2
- (二)修正災害防救法條文……2
- (三)修正廢棄物清理法條文……3
- (四)修正就業服務法條文……4
- (五)刪除並修正漁會法條文……5
- (六)增訂並修正漁業法條文……8
- (七)修正農產品市場交易法條文……9
- (八)修正海關進口稅則部分稅則……10

二、任免官員……11

貳、總統及副總統活動紀要

- 一、總統活動紀要……11
- 二、副總統活動紀要……12

參、國史館公告

- 公告國史館國史研究獎勵出版受理申請……14

總 統 令

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10120114611 號

茲公布「南太平洋公海漁業資源養護與管理公約」，自中華民國 101 年 9 月 23 日生效。

總 統 馬英九
行政院院長 陳 冲

註：附「南太平洋公海漁業資源養護與管理公約」內容見本號公報第 2 頁後插頁。

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264191 號

茲修正災害防救法第二十六條條文，公布之。

總 統 馬英九
行政院院長 陳 冲
內政部部长 李鴻源

災害防救法修正第二十六條條文

中華民國 101 年 11 月 28 日公布

第二十六條 各級政府及相關公共事業應置專職人員，鄉（鎮、市、區）公所於未置專職人員前，得置兼職人員，執行災害預防各項工作。

南太平洋公海漁業資源養護與管理公約

締約方，

承諾確保南太平洋漁業資源之長期養護與永續使用，藉此維護該等資源所在之海洋生態系；

回顧「1982年12月10日聯合國海洋法公約」、「1995年12月4日為履行1982年12月10日聯合國海洋法公約有關養護與管理跨界魚類種群及高度洄游魚類種群條款的協定」，及「1993年11月24日促進公海漁船遵守國際養護與管理措施的協定」所反映之相關國際法，並考量1995年10月31日聯合國糧農組織第28屆大會通過之「負責任漁業行為準則」；

承認在前述協定相關條款所反映之國際法下，國家就區域內公海生物資源之管理有相互合作的義務，並酌情合作建立次區域性或區域性漁業組織或安排，旨在採取必要措施養護該等資源；

考慮到「1982年12月10日聯合國海洋法公約」相關條款所反映之國際法下，沿海國擁有為探勘、開發、養護與管理漁業資源及養護受捕魚衝擊海洋生物資源之目的而於其內行使主權權利之國家管轄權下水域；

承認開發中國家，特別是最低度開發國家、開發中小島國、領地與屬地，以及其等沿海社區，對漁業資源養護、管理與永續發展及自該等資源獲取衡平利益的經濟與地理考量和特殊需求；

注意到區域性漁業管理組織與安排進行績效評鑑之必要，以評估該等組織達成其各別養護與管理目標之程度；

決心有效地合作以消除非法、不報告和不管制捕撈和其對全球漁業資源及其所在生態系狀況之負面衝擊；

意識到避免對海洋環境造成負面影響、保存生物多樣性、維持海洋生態系的完整、及極小化捕魚作業長期或不可逆轉後果之風險的需要；

銘記有效的養護與管理措施須基於可取得的最佳科學資訊和適用預防性作法及生態系作法之漁業管理；

深信締結國際公約，可能是最有利於達成南太平洋漁業資源之長期養護及永續使用暨保護該等資源所在之海洋生態系；

經協議如下：

第1條

定義

1 為本公約之目的：

- (a) 「1982年公約」係指「1982年12月10日聯合國海洋法公約」；
- (b) 「1995年協定」係指「1995年12月4日為履行1982年12月10日聯合國海洋法公約有關養護與管理跨界魚類種群及高度洄游魚類種群條款的協定」；
- (c) 「委員會」係指依第6條所建立的南太平洋區域漁業管理組織委員會；
- (d) 「公約區域」係指依本公約第5條所述之適用區域；
- (e) 「行為準則」係指1995年10月31日聯合國糧農組織第28屆大會所通過的「負責任漁業行為準則」；
- (f) 「漁業資源」係指公約區域內所有魚類，包括軟體動物、甲殼動物、及由委員會所決定之其他海洋生物資源，但排除：
 - (i) 依「1982年公約」第77條第4項屬沿海國國家管轄的定居種；
 - (ii) 「1982年公約」附錄1所列之高度洄游性魚類；
 - (iii) 溯河產卵魚種和降河產卵魚種；及
 - (iv) 海洋哺乳類、海洋爬蟲類和海鳥；
- (g) 「捕魚」係指：
 - (i) 實際或嘗試搜尋、捕捉、獲取或採收漁業資源；
 - (ii) 從事任何其他活動而可合理預期其結果是標明位置、捕捉、獲取或採收漁業資源；
 - (iii) 為支援或準備本定義所述任何活動的海上轉載和任何海上作業；及
 - (iv) 為本定義所述任何活動而使用任何船舶、載具、飛機或水翼船；但涉及船員健康或安全、或船舶安全之緊急情況下的任何作業除外；
- (h) 「漁船」係指用於或意圖用於捕魚之任何船舶，包括魚類加工船、支援船、運搬船，及任何其他直接參與捕魚作業的船舶；
- (i) 「船旗國」除另有指定外，係指：
 - (i) 其所屬船舶有資格懸掛其旗幟之國家，或
 - (ii) 其船舶有資格懸掛區域性經濟整合組織會員旗幟之區域性經濟整合組織；
- (j) 「IUU捕魚」係指聯合國糧農組織為預防、制止和消除非法、無報告及不受規範捕魚國際行動計畫第3點所指之活動，及由委員會所決定的其他活動；

- (k) 「國民」包括自然人與法人；
- (l) 「港口」包括岸外泊船站及用於卸下、轉載、包裝、加工、加油或補給的其他設施；
- (m) 「區域性經濟整合組織」係指一區域性經濟整合組織，其會員已將本公約之管轄事宜讓與之，包括就該等事宜有權對其會員做出拘束之決定；；
- (n) 「嚴重違法」即「1995年協定」第21條第11項所述之定義，及由委員會所決定之其他違法事項；及
- (o) 「轉載」係指在海上或在港口，自一艘漁船卸下全部或任何在公約區域捕獲的漁業資源或漁業資源產品到另一艘漁船。

2

- (a) 「締約方」係指同意受本公約拘束之任何國家或區域性經濟整合組織，且本公約對其有效。
- (b) 本公約比照適用於「1982年公約」第305條第1項(c)、(d)及(e)款所指並成爲本公約一方的任何實體，在此範圍內，締約方指此類任一實體。

第 2 條

目標

本公約之目標爲透過適用預防性作法及生態系作法之漁業管理，以確保漁業資源的長期養護與永續使用，並藉由此作爲維護該等資源所在之海洋生態系。

第 3 條

養護與管理之原則和作法

- 1 爲落實本公約之目標及執行本公約下之決策，締約方、委員會及依第6條第2項與第9條第1項所建立的附屬機構應：
 - (a) 適用下列原則，特別是：
 - (i) 漁業資源之養護與管理應在考量最佳國際實踐下，以透明、負責任與具包容性的方式進行；
 - (ii) 考量對非目標及相關或依賴物種之衝擊，及保護與保存海洋環境的一般性義務，捕魚應與漁業資源的永續使用相稱；
 - (iii) 應預防或消除過漁或過剩的漁撈能力；
 - (iv) 應適時並以適當的方式蒐集、核實、報告及共享有關捕魚之完整且準確的資料，包括對漁業資源所在海洋生態系所造成之相關衝擊資訊；

- (v) 決定應基於可得之最佳科學與技術資訊和所有相關附屬機構之意見；
 - (vi) 應促進締約方間的合作與協調，以確保委員會所通過之養護與管理措施和國家管轄區域內就相同的漁業資源所適用之措施相容；
 - (vii) 應保護海洋生態系，特別是受干擾後需要長時間恢復之海洋生態系；
 - (viii) 應承認開發中國家之利益，特別是最低度開發國家、開發中小島國、領地與屬地，及開發中國家沿海社區之需求；
 - (ix) 應確保有效地遵守養護與管理措施，且無論違法行為在何處發生，對任何違法行為之制裁應充分嚴厲，以抑制違法行為發生，特別是剝奪違法者自非法活動中獲取之利益；及
 - (x) 應極小化來自漁船的污染與廢棄物、丟棄、流失或丟棄漁具之捕獲及對其他物種和海洋生態系之衝擊；及
- (b) 依第 2 項適用預防性作法與生態系作法。

2

- (a) 「1995 年協定」及「行為準則」所述之預防性作法應廣泛適用於漁業資源之養護與管理，以保護該等資源及其所在海洋生態系，特別是締約方、委員會及附屬機構應：
 - (i) 當資訊不明確、不可靠或不充分時，更為謹慎；
 - (ii) 不以欠缺充分的科學資訊為由，而延遲或不採行養護與管理措施；
 - (iii) 考量有關適用預防性作法之最佳國際實踐，包括「1995 年協定」附件 2 及「行為準則」。
- (b) 生態系作法應透過整合方式廣泛適用於漁業資源之養護與管理，依此作法，漁業資源管理之決定，應於該等資源所在更廣泛的海洋生態系之正常運作脈絡下予以考慮，以確保該等資源之長期養護和永續使用，並以此維護該等海洋生態系。

第 4 條

養護與管理措施的相容性

- 1 締約方承認，就經認定跨越沿海國締約方管轄區域與公約區域內之鄰接公海的漁業資源，對其所建立之養護與管理措施，有需要確保其相容性，並認知有義務合作以達此目標。
- 2 為公海所建立之養護與管理措施和為國家管轄區域所採取之養護與管理措施應相容，以確保跨界漁業資源整體之養護與管理。為跨界漁業資源發展相容的養護與管理措施時，締約方應：

- (a) 考量漁業資源的生物統一性、其他生物特徵及資源分布、捕撈該等資源的活動及相關區域地理特性的關係，包括該等資源所在國家管轄區域內之出現及捕撈之程度；
 - (b) 考量沿海國及在公海捕魚的國家各自對有關漁業資源的依賴程度；及
 - (c) 確保此類措施不致對公約區域內整體海洋生物資源造成有害衝擊。
- 3 委員會最初的養護與管理措施應妥適考量相關沿海國締約方已對其國家管轄區域所建立和締約方已對懸掛其旗幟而在公約區域內之鄰接公海作業船舶所建立的養護與管理措施，且不應減損該等措施之有效性。

第 5 條

適用區域

- 1 除另有規定者外，本公約依國際法適用於在國家管轄區外的太平洋水域：
- (a) 從西澳南岸之澳洲國家管轄區域外部界線，沿東經 120 度往南延伸至與南緯 55 度之交會點，一直沿南緯 55 度向東至與東經 150 度之交會點，再沿東經 150 度向南至與南緯 60 度之交會線以東；
 - (b) 從東經 150 度沿南緯 60 度向東至與西經 67 度 16 分之交會線以北；
 - (c) 從南緯 60 度沿西經 67 度 16 分向北至與智利國家管轄區域外部界線之交會點，再沿智利、秘魯、厄瓜多及哥倫比亞國家管轄區域之外部界線至與北緯 2 度之交會線以西；及
 - (d) 沿北緯 2 度向西至與西經 150 度之交會點[但不包括厄瓜多國家管轄區域(加拉巴哥群島)]，再沿西經 150 度向北至與北緯 10 度之交會點，再沿北緯 10 度向西至與馬紹爾群島國家管轄區域外部界線之交會點，再向南並沿繞太平洋國家與領地、紐西蘭與澳洲國家管轄區域外部界線至與本項(a)款所述開端相連接之線以南。
- 2 本公約亦應適用於北緯 10 度線與南緯 20 度線和東經 135 度線與 150 度線所包圍之國家管轄區域外的太平洋水域。
- 3 為本公約之目的，倘需在地球表面確定點、線或區域的位置，該位置應參照國際地球自轉組織所維護之國際大地基準系統而訂定，該系統大部分實際應用上等同於 1984 年全球測量座標系統 (WGS84)。
- 4 本公約不構成對本公約任何締約方就其所主張海域及水區的法律地位和範圍之主張或立場的承認。

第 6 條

組織

- 1 締約方茲同意建立、維持及強化南太平洋區域漁業管理組織（以下簡稱「組織」），為達成本公約之目標，「組織」應執行本公約對其制定之功能。
- 2 「組織」應包含：
 - (a) 委員會；
 - (b) 科學次委員會；
 - (c) 紀律與技術次委員會；
 - (d) 東方次區域管理次委員會；
 - (e) 西方次區域管理次委員會；
 - (f) 財務與行政次委員會；
 - (g) 秘書處，及委員會為協助其工作，隨時依第 9 條第 1 項建立之其他任何附屬機構。
- 3 依國際法，「組織」應有法律人格，在其與其他國際組織及與在締約方領域內之關係上，應享有執行其功能並達成本公約目標所必要的法律能力。「組織」及其官員在締約方領域內應享受之特權與豁免權，應由「組織」與該締約方所訂協定規範之，特別是包括「組織」與秘書處所在地締約方間之協定。
- 4 組織秘書處應設於紐西蘭，或由委員會所決定之其他地點。

第 7 條

委員會

- 1 每一締約方應為委員會之會員，並應任命一名委員會代表，該名代表得由替代代表、專家與顧問陪同。
- 2 委員會應在締約方間選出主席及副主席各一名，任期兩年，並得連選連任一次，但同一職位不應連任超過兩屆，主席及副主席應為不同締約方之代表。
- 3 第一次委員會會議不應遲於本公約生效後 12 個月內舉行。其後除委員會另有決定者外，委員會主席應召開年度會議，時間與地點由委員會決定。委員會應召開為執行本公約下功能所必要之其他會議。
- 4 委員會及其附屬機構之會議次數、會期天數與時程，應適用成本效益原則。

第 8 條

委員會之功能

委員會應依本公約之目標、原則和作法及特定條文規定，行使下列功能：

- (a) 通過養護與管理措施以達成本公約之目標，包括酌情對某些特別魚類種群之養護與管理措施；
- (b) 決定捕撈漁業資源的參與性質與範圍，包括酌情對某些特別魚類種群；
- (c) 擬訂資料蒐集、核實、報告、儲存及散發之規則；
- (d) 促進科學研究之進行，以改善對公約區域及鄰接國家管轄水域之漁業資源和海洋生態系的知識，並與科學次委員會合作，建立在公約區域內為科學目的從事捕撈漁業資源之程序；
- (e) 與委員會會員及相關組織、沿海國、領地與屬地合作與交換資料；
- (f) 促進公約區域、鄰接國家管轄水域及鄰接公海區域養護與管理措施之相容性；
- (g) 發展並建立有效的監測、管控、偵察、遵守與執法程序，包括非歧視性的市場有關及貿易有關措施；
- (h) 依國際法發展過程，以評估船旗國履行本公約下義務之績效，及倘適當的話，通過提案以促進履行該等義務；
- (i) 通過措施以預防、制止及消除 IUU 捕魚；
- (j) 擬訂本公約下合作非締約方地位之規則；
- (k) 審查本公約條文及委員會所通過之養護與管理措施的有效性，以符合本公約目標；
- (l) 監督「組織」之編制、行政、財務及其他內部事務，包括組成機構間的關係；
- (m) 指導委員會附屬機構工作之進行；
- (n) 以共識通過「組織」之預算、財務規章及之後任何修正，以及「組織」之議事規則，其得包括在休會期間決定之作成與記錄的程序；
- (o) 通過並於有所需要時修正委員會及其附屬機構功能行使所需之任何其他規章；
- (p) 為達成本公約目標之所需，行使任何其他功能及作成任何其他決定。

第 9 條

附屬機構

- 1 除科學次委員會、紀律與技術次委員會、東方次區域管理次委員會、西方次區域管理次委員會及財務與行政次委員會外，委員會得視需要建立其他附屬

機構。此等額外附屬機構之建立，在成本考量下，得為常設性或臨時性。

- 2 在建立此等額外附屬機構時，委員會應賦予特定職權範圍及工作方法，惟此特定職權範圍均應符合本公約目標及養護與管理原則和作法、「1982年公約」及「1995年協定」。委員會得隨時審查及酌情修正此等職權範圍與工作方法。
- 3 所有附屬機構應向委員會提出報告、意見與建議，並定期協助審查委員會所通過的養護與管理措施之有效性。
- 4 在執行其功能時，所有附屬機構應考量委員會所建立其他附屬機構之相關工作，並應酌情考量其他漁業管理組織及其他相關技術與科學機構之工作。
- 5 所有附屬機構得建立工作小組。附屬機構亦得視需求依委員會所提之一般或特定指導尋求外界意見。
- 6 除委員會另有決定者外，所有附屬機構應依委員會議事規則運作。

第 10 條

科學次委員會

- 1 每一委員會會員有權任命一名科學次委員會代表，該名代表得由替代代表及顧問陪同。
- 2 科學次委員會功能應為：
 - (a) 規劃、從事與審查漁業資源狀況之科學評估，包括與相關沿海國締約方合作下，對跨界於公約區域和國家管轄區域之漁業資源；
 - (b) 基於此等評估，提供意見和建議予委員會及其附屬機構，酌情包括：
 - (i) 參考點，包括「1995年協定」附件 2 所述之預防性參考點；
 - (ii) 基於此等參考點之漁業資源管理策略或計畫；及
 - (iii) 養護與管理替代方案之分析，如建立不同水平的總可捕量或總可容許漁獲努力量，以估計每一替代方案達成委員會所通過或考量中的管理策略或計畫之目標的程度；
 - (c) 提供捕魚對公約區域海洋生態系衝擊的意見和建議予委員會及其附屬機構，包括脆弱的海洋生態系之認定與分佈、捕魚對此類脆弱的海洋生態系可能的衝擊，及預防對其造成重大負面衝擊之措施；
 - (d) 鼓勵及促進科學研究之合作，以改善對公約區域漁業資源及海洋生態系狀況的知識，包括有關跨界於公約區域及國家管轄區域間之漁業資源的知識；及
 - (e) 倘其認為適當或應委員會要求，提供其他科學意見予委員會及其附屬機

構。

- 3 委員會議事規則應規定，在科學次委員會無法達成共識提供意見時，科學次委員會應在其報告中陳述其成員的不同見解。科學次委員會之報告應公開。
- 4 在考量科學次委員會建議下，委員會得委請科學專家提供公約區域漁業資源和海洋生態系及任何與委員會考量的養護與管理措施有關的資訊及意見。
- 5 委員會應訂定適當安排，以對科學次委員會之報告、意見和建議，進行定期獨立的同儕審查。

第 11 條

紀律與技術次委員會

- 1 每一委員會會員有權任命一名紀律與技術次委員會代表，該名代表得由替代代表及顧問陪同。
- 2 紀律與技術次委員會的功能應為：
 - (a) 監測及審查本公約下通過的養護與管理措施之履行及遵守，並提供意見和建議予委員會；
 - (b) 在其認為適當或應委員會要求時，提供有關履行和遵守本公約條文和委員會通過或考量中的養護與管理措施之其他資訊、技術意見及建議；
 - (c) 審查委員會就監測、管控和偵察及執法所通過合作措施之履行，並提供意見與建議予委員會。

第 12 條

東方與西方次區域管理次委員會

- 1 東方與西方次區域管理次委員會應主動或應委員會要求，對附件 1 所述公約區域之部分，依本公約第 20 條規定就養護與管理措施及依第 21 條規定就參與漁業資源之捕撈，發展及提出建議予委員會。此等建議應符合委員會所通過之一般性適用措施，並應取得相關沿海國締約方針對該等事項依本公約第 20 條第 4 項與第 21 條第 2 項所規定之同意。在適當時，該等次委員會應盡所有努力協調其建議。
- 2 委員會得隨時依共識修正附件 1，以調整所載之地理座標。此等修正應自其通過之日或修正案指定之任一日期起生效。
- 3 委員會得決定賦予一個次區域管理次委員會，依本條規定對發展特定漁業資源及向委員會提出建議之主要責任，即使該資源之分布範圍超出該次委員會依附件 1 所負責之公約區域部分。

- 4 每一次委員會應基於科學次委員會之意見與建議發展其建議。
- 5
- (a) 鄰接任一次委員會依本條負責公約區域部分之委員會會員，或委員會會員之漁船：
- (i) 目前在該區域作業；
 - (ii) 過去兩年在該區域作業；或
 - (iii) 捕撈依前述第 3 項分配予該次委員會之特定漁業資源，包括公約區域之鄰接國家管轄區域；
- 應為該次委員會之成員。
- (b) 任何委員會會員依(a)款規定並非次委員會之成員者，在通知秘書處其有意於 2 年內在次委員會依本條所負責之公約區域部分捕魚後，應成為該次委員會之成員。倘通報之委員會會員未於通知後 2 年內在該公約區域之部分水域捕魚，其次委員會之成員身份應終止。
- (c) 任何委員會會員依(a)及(b)款規定並非次委員會之成員者，得派一名代表參與該次委員會之工作。
- (d) 為本項之目的，「捕魚」只包括第 1 條第 1 項(g)款(i)目及(ii)目所述之活動。
- 6 東方與西方次區域管理次委員會應盡所有努力以共識通過其建議予委員會。倘對一項建議以共識達成協議之所有努力均用罄時，應由相關次區域管理次委員會成員以三分之二多數通過。提供予委員會之報告得包括多數與少數之意見。
- 7 依本條所作成之建議，將為委員會所通過第 20 條與第 21 條所述養護與管理措施和決定的基礎。
- 8 任何因次區域管理次委員會工作所衍生的額外成本，應由相關次委員會成員負擔。

第 13 條

財務與行政次委員會

- 1 每一委員會會員有權任命一名財務與行政次委員會代表，該名代表得由替代代表及顧問陪同參加。
- 2 財務與行政次委員會之功能應係就預算、委員會會議時間與地點、委員會出版品、與執行長和秘書處職員有關事項，及委員會向其所提之其他財務與行政事項，向委員會提出意見。

第 14 條

秘書處

- 1 秘書處應執行委員會所委任之功能。
- 2 執行長應為秘書處的首席行政官員，應由締約方依其所決定之條件同意後任命之。
- 3 秘書處任一職員應由執行長依委員會所訂定之人事規章任命。
- 4 執行長應確保秘書處的有效運作。
- 5 依本公約建立的秘書處應具成本效益。秘書處的建置及功能，在適當時應考量使現存區域機構執行部分技術性秘書功能，及更明確地以契約安排獲取服務。

第15條

預算

- 1 委員會應在第一次會議通過預算，以支應委員會及其附屬機構，並亦應通過財務規章。有關預算與財務規章之所有決定，包括與委員會會員會費及會費計算公式之有關決定，應以共識決為之。
- 2 每一委員會會員應分攤預算。每一委員會會員所繳之年度會費，應係基於委員會認定其在該等漁業資源總漁獲量所計算之變動費，與基本費之組合，並應考量其經濟狀況。對在公約區域漁獲僅來自其連接公約區域領地之委員會會員，所應考量者為該領地之經濟狀況。委員會應通過並得修正其會費計算公式，該公式應列於委員會之財務規章。
- 3 為履行攸關其功能之目的，委員會得要求及接受組織、個人及其他來源之財務捐助和其他形式的援助。
- 4 執行長應在不遲於財務與行政次委員會議召開前 60 天，提送下兩個會計年度之年度預算草案連同繳付時程予每一委員會會員，財務與行政次委員會將在會議中通過建議予委員會。秘書處在準備預算草案時，應充分考量所需的成本效益與委員會之指導，如會計年度中可能需包括附屬機構之會議。委員會每屆年會應通過下一會計年度之預算。
- 5 為滿足委員會下一年度行政開支的目的，倘委員會無法通過預算，委員會行政預算之會費分攤水準應依前一年之預算水準而訂定，直到經共識決通過新預算。
- 6 委員會年會後，執行長應通知每一委員會會員其應繳之會費，其會費依前述

第 2 項委員會通過之公式計算，之後每一委員會會員應儘快向「組織」繳交會費。

- 7 除委員會另有授權者外，會費應以「組織」秘書處所在國貨幣繳付之。
- 8 在某會計年度中成為本公約締約方者，依本條規定，該會計年度其應繳交之會費，係按本公約對其生效日起算該年度尚剩餘完整月份之比例計算。
- 9 除委員會另有決定者外，逾兩年未繳交「組織」任何款項之任一委員會會員，不應參與委員會任何決定之作成，直到其向委員會繳清所有欠款為止。
- 10 「組織」之財務運作應依委員會通過之財務規章進行，每年並接受由委員會指定的獨立稽核員之審計。

第 16 條

決策

- 1 作為一般規則，委員會之決定應採共識決。為本條之目的，共識決是指在決定作成時沒有任何正式的反對意見。
- 2 除本公約明文規定應採共識決決定者外，倘主席認為對某一決定達成共識決之所有努力已用罄時：
 - (a) 有關委員會程序問題之決定，應由投贊成票或否定票之委員會會員多數決來決定；
 - (b) 有關實質問題之決定，應由投贊成票或否定票之委員會會員四分之三多數決來決定。
- 3 倘對特定問題是否為實質問題有所爭執時，該問題應視為實質問題。

第 17 條

委員會決定之履行

- 1 委員會就實質問題所通過之決定，應以下列方式對委員會會員產生拘束力：
 - (a) 執行長應將每項決定迅速通知所有委員會會員；及
 - (b) 在第 2 項限制下，於前述(a)款通知書中所載送交日期起算 90 天後，該決定應對所有委員會會員產生拘束力。
- 2
 - (a) 任一委員會會員得在一項決定的通知日起 60 天內（「異議期」），向執行長提出異議。在此情況下，除依第 3 項與附件 2 之規定外，該決定遭異議之部分不應對該委員會會員產生拘束力。

- (b) 提出異議之委員會會員應同時：
 - (i) 詳細敘明其異議的理由；
 - (ii) 採取與其異議之決定具有同等效果之替代措施，且適用日期相同；及
 - (iii) 告知執行長替代措施之內容。
 - (c) 唯有基於該決定在形式上或實質上無理由地歧視該委員會會員，或不符合本公約條文規定，或與「1982年公約」或「1995年協定」所反映之其他相關國際法規定不相符為理由時，始得提出異議。
- 3 對決定提出異議之任一委員會會員得隨時撤回該異議。此時該決定應依第1項(b)款規定或異議撤回之日期起對該會員產生拘束力，以日期較晚者為準。
- 4 執行長應迅速通知所有委員會會員：
- (a) 每一異議之收訖與撤回；及
 - (b) 異議的理由與依第2項所採取或擬採取的替代措施。
- 5
- (a) 當委員會會員依第2項提出異議時，應於異議期結束後30天內，依附件2程序成立審查小組。
 - (b) 執行長應迅速通知所有委員會會員審查小組之成立。
 - (c) 倘有二或二以上委員會會員，基於相同理由提出異議，該等異議應由同一審查小組處理，其成員應依附件2第2項所規定者。
 - (d) 倘有二或二以上委員會會員，以不同理由提出異議，該等異議在相關會員同意下，得由同一審查小組處理，其成員應依附件2第2項所規定者。倘無此等同意，則以不同理由提出之異議應由個別審查小組加以處理。
 - (e) 審查小組應於成立後45天內，向執行長送交其發現和建議，說明該等委員會會員所提異議之理由是否成立，及所採取替代措施是否與所提異議之決定具有同等效果。
 - (f) 執行長應迅速將審查小組之發現與建議，通知所有委員會會員。該等發現與建議如何處理及其效力應依附件2規定為之。
- 6 本條文不限制委員會會員在任何時間，依本公約有關爭端解決之條文規定，就有關本公約解釋或適用之爭端，提交具拘束力解決的權利。

第18條

透明度

- 1 委員會應促進履行本公約下決策過程及其他活動的透明度。

- 2 除委員會另有決定者外，委員會及其附屬機構之所有會議應開放予依第 4 項登記的所有參與者和觀察員。委員會應發表其報告及通過的養護與管理措施，並持有一份所有報告及公約區域有效的養護與管理措施之公開記錄。
- 3 委員會應透過公開散發非商業性敏感資訊，及酌情便利與非政府組織、漁業界代表之諮商和參與，特別是船隊及其他利益相關機構和個人，以促進履行本公約之透明度。
- 4 非締約方、相關政府間與非政府間組織，包括對委員會有關事項具相關利益之環保組織和漁業組織，其代表應有機會以觀察員或其他適當方式參加委員會及其附屬機構的會議。委員會之議事規則應規定此類參加，且不應對此有過度限制，亦應使此等代表可適時取得所有相關資訊。

第 19 條

承認開發中國家的特殊需求

- 1 委員會應完全承認區域內開發中國家締約方，特別是其中最低度開發國家、發展中小島國，及領地與屬地，對公約區域漁業資源之養護與管理及該等資源之永續使用的特殊需求。
- 2 為落實其以合作建立本公約所涵蓋漁業資源的養護與管理措施之義務，委員會會員應考量區域內開發中國家締約方之特殊需求，特別是區域內最低度開發國家和開發中小島國及領地與屬地，特別是：
 - (a) 此等依賴海洋生物資源開發的開發中國家，及領地與屬地的脆弱性，包含滿足其人口或部分人口的營養需求；
 - (b) 需避免對此等開發中國家締約方及領地與屬地之生計、小規模及家計型漁民與女性漁工以及原住民有負面衝擊，並確保其參與漁業；及
 - (c) 需確保此等措施不會造成直接或間接地將養護行動的負擔不合比例地轉嫁至此等開發中國家締約方及領地與屬地。
- 3 委員會會員應直接或透過委員會及其他區域性或次區域性組織進行合作以：
 - (a) 提升區域內開發中國家締約方之能力，特別是區域內最低度開發國家、開發中小島國，及領地與屬地，以養護與管理漁業資源及對該等資源發展其本身漁業；
 - (b) 協助區域內開發中國家締約方，特別是區域內最低度開發國家、開發中小島國，及領地與屬地，使其有能力參與漁業資源之捕撈，包括符合第 3 條與第 21 條之便利其使用此等漁業資源。
 - (c) 便利區域內開發中國家締約方，特別是區域內最低度開發國家、開發中小島國，及領地與屬地，參與委員會及其附屬機構的工作。

- 4 為本條所規定目的所進行之合作，得包括財務協助的提供、關於人力資源發展的協助、技術協助、技術轉移，包含經由聯合投資的安排，及顧問與諮詢服務。此等協助，除其他外，應朝向：
 - (a) 藉由漁業資料與相關資訊之蒐集、報告、核實、交換與分析，改善漁業資源之養護與管理；
 - (b) 資源評估與科學研究；及
 - (c) 監測、管控、偵察、遵守與執法，包括地方層級的訓練及能力建構、國家與區域性觀察員計畫之發展與資助，及取得技術與設備。
- 5 委員會應建立基金以便利區域內開發中國家締約方，特別是區域內最低度開發國家、開發中小島國，及酌情領地與屬地，有效參與委員會及其附屬機構的工作。委員會財務規章應包含該基金行政事宜及援助資格標準之準則。

第 20 條 養護與管理措施

- 1 委員會通過之養護與管理措施應包含措施以：
 - (a) 確保漁業資源之長期永續，及促進資源負責任利用之目標；
 - (b) 預防或消除過漁及過剩漁撈能力，以確保漁獲努力量水準不超過與漁業資源永續使用相稱之水準；
 - (c) 維持或恢復非目標、相關或依賴物種之族群量，使其在該等可能受到嚴重威脅物種之繁殖力水準之上；及
 - (d) 保護漁業資源與非目標及相關或依賴物種所在之棲地和海洋生態系不受捕魚所衝擊，包括預防對脆弱海洋生態系造成重大負面衝擊之措施，及在無法充分確定脆弱海洋生態系是否存在或捕魚是否會對其造成重大負面衝擊時之預防措施。
- 2 委員會通過之特定養護與管理措施，應酌情包括訂定：
 - (a) 參考點，包括「1995 年協定」附件 2 所述之預防參考點；
 - (b) 接近或超過該參考點時，所採取的行動；
 - (c) 任何漁業資源的捕撈性質與範圍，包括建立總可捕量或總可容許漁獲努力量；
 - (d) 得進行或不得進行捕魚之一般或特定地點；
 - (e) 得進行或不得進行捕魚的期間；
 - (f) 有關得保留漁獲之魚體大小限制；及

- (g) 捕魚時可使用的漁具、技術或捕魚實踐之類型。
- 3 在依第 2 項(c)款訂定任何漁業資源的總可捕量或總可容許漁獲努力量時，委員會應考量下列因素：
- (a) 漁業資源開發之狀況及階段；
 - (b) 漁業資源的捕魚型態；
 - (c) 有所相關時，在國家管轄區域內之同一漁業資源捕獲量；
 - (d) 丟棄及任何其他意外死亡之允許量；
 - (e) 非目標及相關或依賴物種之捕獲量，及對漁業資源所在之海洋生態系的衝擊；
 - (f) 限制可採捕漁業資源屬性的相關生態與生物因子；
 - (g) 相關環境因子，包括可能影響漁業資源及非目標與相關或依賴物種之營養層交互作用；及
 - (h) 在適當時，其他政府間組織通過之相關養護與管理措施。

委員會應定期審查其對任何漁業資源所建立之總可捕量或總可容許漁獲努力量。

4

- (a) 對跨界於公約區域及沿海國締約方國家管轄區域之漁業資源：
 - (i) 委員會應酌情為公約區域建立總可捕量或總可容許漁獲努力量及其他養護與管理措施。委員會與相關沿海國締約方應依本公約第 4 條，於其各自養護與管理措施之協調進行合作；
 - (ii) 在相關沿海國締約方明示同意下，委員會得酌情依本公約附件 3 建立適用於漁業資源整體分布範圍內的總可捕量或總可容許漁獲努力量；及
 - (iii) 在一個或更多沿海國締約方不同意適用於漁業資源整體分布範圍內之總可捕量或總可容許漁獲努力量情況下，委員會得酌情建立適用於同意的沿海國締約方管轄區域及公約區域之總可捕量或總可容許漁獲努力量。委員會在建立總可捕量或總可容許漁獲努力量時，比照適用附件 3 之規定。
- (b) 在包含(a)款(ii)目或(iii)目情況下，得通過其他互補的養護與管理措施，以確保漁業資源在其整體分布範圍內之永續養護與管理。為落實本項，依第 4 條所述相容性原則，委員會得為公海及相關沿海國締約方對其國家管轄區域通過此等措施。委員會得在相關沿海國締約方同意下，通過適用於漁業資源整體分布範圍內之此等措施。

- (c) 委員會依(a)款(ii)目、(a)款(iii)目與(b)款通過的所有養護與管理措施，包括總可捕量或總可容許漁獲努力量，係不妨害且不影響沿海國依「1982年公約」及「1995年協定」相關條款所反映之國際法，在其國家管轄區域內為探勘、開發、養護與管理海洋生物資源的目的之主權權利，及不影響依第5條所建立之本公約適用區域。

5

- (a) 當捕魚對漁業資源或該等資源所在之海洋生態系的永續性產生嚴重威脅，或一自然現象或人為災害已對或可能對漁業資源狀態造成重大負面衝擊時，倘有需要時，包括在休會期間，委員會應依第16條通過適用於緊急情況之措施，以確保捕魚不致使此威脅或負面衝擊更形惡化。
 - (b) 緊急情況下所採措施，應基於可取得之最佳科學證據，此等措施應屬暫時性，且需在該等措施通過後之下一次委員會議重新考慮作決定。依第17條第1項，此等措施應對所有委員會會員產生拘束力。此等措施不應適用第17條第2項所述之異議程序，但得為本公約下爭端解決程序之標的。
- 6 委員會通過之養護與管理措施應漸進地發展，及整合至每一漁業資源設定管理目標之管理策略或計畫、用於衡量該目標進展之參考點、使用於該參考點之指標，及因應特別指標水準所採取的措施。

第21條

參與漁業資源之捕撈

- 1 對參與任何漁業資源之捕撈作成決定時，包括總可捕量或總可容許漁獲努力量之分配，委員會應考量該漁業資源狀況、漁獲努力量現有水準及相關程度內之下列標準：
- (a) 歷史漁獲量及過去與現在於公約區域的捕魚型態與捕魚實踐；
 - (b) 本公約下的養護與管理措施之遵守；
 - (c) 對漁船行使有效船旗國管控所展現之能力與意願；
 - (d) 對養護與管理漁業資源之貢獻，包括正確資料之提供，以及有效監測、管控、偵察與執法；
 - (e) 開發中國家對漁業開發的渴望與利益，特別是區域內的開發中小島國，及領地與屬地；
 - (f) 沿海國，特別是開發中沿海國及領地與屬地，對跨界於此等國家、領地與屬地管轄區域及公約區域間之漁業資源之利益；
 - (g) 沿海國及領地與屬地之需求，其經濟主要依賴跨界於此等國家、領地與屬

地管轄區域和公約區域間漁業資源之開發和捕撈；

- (h) 委員會會員利用漁獲供國內消費的程度，及該漁獲對其糧食安全之重要性；
 - (i) 依 22 條對負責任發展新漁業或探測性漁業的貢獻；及
 - (j) 對有關漁業資源從事之科學研究及公開散發此等研究結果的貢獻。
- 2 委員會依第 20 條第 4 項(a)款(ii)目及(iii)目為任何漁業資源建立總可捕量或總可容許漁獲努力量時，在相關沿海國締約方明示同意下，得對整體分布範圍內資源之參與捕撈作出決定。
 - 3 依第 2 項作成決定時，委員會應考量分布範圍內有關漁業資源的歷史漁獲量及過去與現在的捕魚型態和捕魚實踐，及第 1 項(b)至(j)款所列之標準。
 - 4 當相關沿海國締約方未依第 2 項同意時：
 - (a) 委員會應依第 1 項，就第 20 條第 4 項(a)款(i)目為公約區域建立總可捕量或總可容許漁獲努力量之分配作決定；及
 - (b) 委員會與相關沿海國締約方應依第 4 條進行合作。
 - 5 依本條作成決定時，委員會亦得酌情考量其他國際漁業管理體制之績效。
 - 6 倘適當時，委員會應在考量本公約條文及新締約方利益情況下，審查參與漁業資源之捕撈決定，包括總可捕量與總可容許漁獲努力量之分配。

第 22 條

新漁業或探測性漁業

- 1 未經捕撈或未經特別漁具或技術捕撈達 10 年或以上之漁業，應僅在委員會對該漁業及酌情對非目標與相關或依賴物種通過審慎之初步養護與管理措施，以及保護海洋生態系遠離捕魚活動所造成的負面衝擊之適當措施後，開放為漁業或開放該漁具或技術捕魚。
- 2 此等初步養護與管理措施，包括有意捕魚之通知、開發計畫之建立、預防對海洋生態系造成負面衝擊之減緩措施、特別漁具之使用、觀察員之配置、資料之蒐集，及研究或探測捕撈之從事等，應符合本公約目標和養護與管理原則及作法。該等措施應確保新漁業資源是基於預防性和逐步開發，直到委員會取得足夠資訊，通過合適詳細的養護與管理措施。
- 3 委員會得隨時通過標準化的最低養護與管理措施，以在此等新漁業開始作業前，適用於部分或所有新漁業。

第 23 條

資料蒐集、彙整和交換

- 1 為提升以養護與管理漁業資源、非目標及相關或依賴物種，及保護該等所在之海洋生態系為基礎之資訊，並對消除或減少 IUU 捕魚及其對該等資源之負面衝擊有所貢獻，委員會在充分考量「1995 年協定」附件 1 下，除其他外，應為下述事宜發展標準、規則和程序：
 - (a) 委員會會員向委員會就所有相關資料之蒐集、核實與即時報告；
 - (b) 委員會對正確且完整資料之彙整和管理，以便利有效的資源評估與確保能有最佳的科學意見；
 - (c) 資料之安全、使用與散發，然於適當時維持保密；
 - (d) 委員會會員間及與其他區域性漁業管理組織暨其他相關組織之資料交換，包括從事 IUU 捕魚之漁船及酌情有關此等漁船之受益所有權資料，旨在適當時以統一格式整併此等資訊並散發；
 - (e) 區域性漁業管理組織間文件協調與資料分享之便利，在可適用時包括有關漁船登記、漁獲文件和貿易追蹤方案之資料交換程序；及
 - (f) 定期審核委員會會員遵從資料蒐集與交換之規範，並處理審核所指出之任何不遵從。
- 2 委員會應確保有關在公約區域作業之船數、本公約下管理漁業資源之狀況、漁業資源評估、公約區域之研究計畫，及與區域性和全球性組織合作倡議等資料之公開。

第 24 條

委員會會員的義務

- 1 有關在公約區域內之捕魚活動，每一委員會會員應：
 - (a) 履行本公約和委員會通過之任何養護與管理措施，及採取所有必要措施，以確保其有效性；
 - (b) 合作以促進本公約之目標；
 - (c) 採取所有必要措施，以支持為預防、制止和消除 IUU 捕魚所做的努力；及
 - (d) 以符合委員會建立的標準、規則和程序，蒐集、核實及報告有關公約區域漁業資源和海洋生態系之科學、技術與統計資料。
- 2 每一委員會會員應每年向委員會報告其如何履行委員會通過之養護與管理

措施，及其遵從與執法程序。對沿海國締約方而言，該報告應包括該等依第 20 條第 4 項和第 4 條；對鄰接公約區域之其管轄權水域內跨界漁業資源所採取之養護與管理措施資訊。此等報告應予公開。

- 3 在不妨害船旗國責任之優先性下，每一委員會會員應盡最大可能，採取措施及合作，以確保其國人或為其國人擁有、經營或控制的漁船遵守本公約條文及委員會通過之任何養護與管理措施，並立即調查任何違反該等條款和措施之指控。委員會會員應在其國內法律允許範圍內，在適當的定期期間，提供調查進展報告和調查終結時有關結果之最終報告予委員會及委員會有關會員。
- 4 每一委員會會員在其國內法律與規章允許範圍內，應建立安排，向其他委員會會員之檢察當局提供有關違反本公約條款和委員會通過之任何養護與管理措施之指控的證據，包括對懸掛其旗幟的船舶受益所有權的可得資訊。
- 5 每一委員會會員應以善意履行本公約所賦予的義務，並以不構成權利濫用之方式行使本公約賦予的權利。

第 25 條

船旗國義務

- 1 每一委員會會員應採取所有必要措施，以確保懸掛其旗幟之漁船：
 - (a) 遵守本公約條款及委員會通過之養護與管理措施，且該等在公約區域作業時，不從事任何減損此類措施有效性的活動；
 - (b) 不在鄰接公約區域之國家管轄水域進行未經授權的捕撈；
 - (c) 持有及操作足以遵守委員會通過之漁船監控系統標準和程序的設備；及
 - (d) 依委員會通過之標準與程序，卸下或轉載於公約區域捕獲之漁業資源。
- 2 委員會會員不得允許任何懸掛其旗幟的漁船被用於公約區域捕魚，除非該漁船經該委員會會員之適當當局授權。
- 3 每一委員會會員應：
 - (a) 僅在可對懸掛其旗幟之漁船有效行使其在本公約下與依國際法之責任時，授權使用該等漁船於公約區域捕魚；
 - (b) 維持有資格懸掛其旗幟並經授權捕撈漁業資源之漁船登錄名冊，並確保所有此等漁船之有關委員會指定載明之資訊均列入該名冊。
 - (c) 依委員會通過之措施，立即對被指控違反本公約條款或委員會通過之任何養護與管理措施之懸掛其旗幟漁船進行調查，並對所採取之行動提出完整報告。該報告應包括在其國內法律允許範圍內，於適當之定期向委員會報

告調查進展，及調查結束時最終之結果報告。

- (d) 考量相關因素，包括漁獲量價值、取得遵從、抑制進一步違法和剝奪違法者自其非法活動獲取之利益，確保對違法所處之懲罰足夠嚴厲；及
 - (e) 依其法律規定，倘懸掛其旗幟之漁船已遭認定涉及一嚴重違犯本公約條款或委員會通過之任何養護與管理措施時，特別確保該漁船停止捕魚活動，且不得在公約區域從事此類活動，直到該漁船履行完畢委員會會員對違法所處之所有未盡處罰為止。
- 4 鼓勵每一委員會會員確保懸掛其旗幟在公約區域作業之漁船，就船舶及其船員在海上安全，依循可適用的國際義務及參照相關建議與準則。
 - 5 每一委員會會員應確保懸掛其旗幟而從事或有意從事漁業資源研究之漁船，遵守委員會為在公約區域從事科學研究所建立之任何程序。

第 26 條

港口國義務

- 1 港口國締約方有依國際法之權利與義務採取措施，促進次區域性、區域性、與全球性養護與管理措施的有效性。當採取此類措施時，港口國締約方不應在形式上或實質上對任何國家漁船有所歧視。
- 2 每一委員會會員應：
 - (a) 對在公約區域從事捕魚而進入及使用其港口之漁船，執行委員會所通過之養護與管理措施，除其他外，包括有關漁業資源之卸下和轉載、對漁船、文件、船上漁獲物和漁具之檢查、以及港口服務之使用；及
 - (b) 當漁船自願在其港口，且漁船船旗國要求其提供協助，以確保遵守本公約條款和委員會所通過之養護與管理措施時，於合理可行及依其國內法律與國際法下，提供協助予該船旗國。
- 3 當委員會會員認為使用其港口之漁船，違反本公約任一條款或委員會所通過之任一養護與管理措施時，應通知有關船旗國、委員會與其他相關國家及適當的國際組織。委員會會員應提供該事件完整的文件予船旗國和酌情予委員會，包括所有檢查紀錄。
- 4 本條文不影響締約方依國際法在其領域內對港口主權之行使。

第 27 條

監測、遵守與執法

- 1 為對捕魚有效監測、管控與偵察及確保遵守本公約和委員會所通過之養護與

管理措施，委員會應建立適當的合作程序，除其他外，包括：

- (a) 經核准於公約區域捕魚之委員會漁船名冊的建立與維護、漁船和漁具之標識、捕魚活動之記錄、及利用衛星漁船監控系統對漁船移動與活動之通報，該系統之設計應確保接近即時傳送之完整性與安全性，包括直接和同時傳送予委員會和船旗國之可能性；
 - (b) 締約方海上與港口檢查計畫，包括締約方之間在公約區域互相登臨與檢查的程序，及可參與該計畫締約方之檢查船舶與航空器的通報程序；
 - (c) 轉載之規範與監督；
 - (d) 為預防、制止和消除 IUU 捕魚而監測轉載、卸載和貿易之無歧視性且符合國際法的市場相關措施，在適當時包括漁獲文件方案；
 - (e) 所查獲的違法、調查進展與結果及所採取執法行動之通報；及
 - (f) 對於 IUU 捕魚活動之處理，包括藉由認定從事 IUU 捕魚活動之漁船以及通過適當措施，以預防、制止和消除 IUU 捕魚，如發展 IUU 漁船名冊，以剝奪從事此等活動漁船船主和經營者自此等活動所獲取之利益。
- 2 委員會得通過程序，以使包括有關漁業資源之貿易相關措施得由委員會會員適用於減損委員會所通過的養護與管理措施有效性或未遵守之任一國家、委員會會員或有漁船從事捕魚活動之實體。此等措施應當包括一系列可能之回應，以便考量採取之理由和不遵守的程度，及酌情包括能力建構之合作倡議。委員會會員履行任何貿易相關措施，應符合會員之國際義務，包括其在世界貿易組織協定之義務。
 - 3 在本公約生效後 3 年內，倘委員會尚未通過第 1 項 b 款所述海上檢查程序，或有效履行委員會會員在「1995 年協定」之義務，及本公約確保遵守委員會通過養護與管理措施義務之替代機制時，「1995 年協定」第 21 條和第 22 條應視為本公約之一部分而適用於締約方，區域內漁船之登臨與檢查及任何隨後的執法行動，應依「1995 年協定」第 21 條和第 22 條及委員會為履行該等條款所需決定之額外可行程序來進行。

第 28 條

觀察員計畫

- 1 委員會應於本公約生效後 3 年內或委員會所同意之其他時程，建立觀察員計畫，以在公約區域蒐集經核實的漁獲與努力量資料、其他科學資料及與漁業活動有關的其他資訊，和其對海洋環境之衝擊。該觀察員計畫所蒐集之資訊也應酌情用於支持委員會及其附屬機構之功能，包括紀律與技術次委員會。觀察員計畫應由委員會秘書處協調，並應考量漁業資源的特性及其他相關因

- 素，以彈性方式籌設。就此而言，委員會得簽訂提供觀察員計畫之契約。
- 2 觀察員計畫應由源自委員會認定合格的計畫或服務提供者之獨立且公正的觀察員組成，並就其最大可能範圍內與其他區域性、次區域性及國家觀察員計畫相互協調。
 - 3 委員會應考量科學次委員會和紀律與技術次委員會之意見，發展觀察員計畫。該計畫應依委員會所發展的標準、規則與程序加以運作，除其他外，包括：
 - (a) 船旗委員會會員同意後，另一委員會會員派遣觀察員至懸掛該會員旗幟船舶之安排；
 - (b) 對不同漁業資源適當之涵蓋水準，以監測與核實漁獲量、努力量、漁獲組成及漁撈作業之其他細節；
 - (c) 蒐集、校正與報告科學資料及相關資訊之要件，以履行本公約條款及委員會所通過之養護與管理措施；
 - (d) 觀察員船上住宿之時需求，以確保觀察員安全與訓練，及確保其可充分接近並使用船上所有相關用具和設備，以有效執行其責任。

第 29 條 委員會之年度報告

- 1 委員會應發表年度報告，包括委員會為達成本公約目標所採決定之細節，並提供委員會回應聯合國大會或聯合國糧農組織任何建議所採行動之資訊。
- 2 該報告應予公開，並提供給聯合國秘書長和聯合國糧農組織秘書長。

第 30 條 審查

- 1 委員會應審查其所通過養護與管理措施於滿足本公約目標之有效性，以及該等措施與第 3 條之原則與作法的一致性。此等審查得包括檢視公約本身條款之有效性，至少每 5 年進行一次。
- 2 委員會應決定此等審查之職權範圍和方法，並依其以最佳國際實踐指導所設定之標準，及酌情納入附屬機構的貢獻和獨立於委員會具經認可能力之人員參與。
- 3 委員會應考量此等審查所產生之建議，包括透過適當修正其養護與管理措施和該等措施之履行機制。因審查而產生本公約條款之修正提案，應依第 35 條規定處理。

- 4 此等審查結果應於送交委員會後公開。

第 31 條

與其他組織的合作

- 1 委員會應酌情與其他區域性漁業管理組織、聯合國糧農組織和其他聯合國專門機構合作，並與其他相關組織就有共同利益的事務進行合作。
- 2 委員會應考量其他區域性漁業管理組織和其權能有關於公約區域或公約區域鄰接水域，或包括非目標及相關或倚賴物種之特別海洋生物資源，且其目標符合並支持本公約目標之其他相關政府間組織所通過之養護與管理措施或建議。委員會應盡力確保其決定與此等養護與管理措施或建議相容並支持之。
- 3 委員會應尋求與其他組織於諮詢、合作及共同研究之合適安排，特別是其應尋求與其他相關組織合作，旨在減少及最終消除 IUU 捕魚。

第 32 條

非締約方

- 1 委員會會員應交換有關懸掛本公約非締約方旗幟且在公約區域從事捕魚之漁船的活動資訊，委員會會員應個別或集體採取符合本公約及國際法的措施，以制止減損適用於公約區域養護與管理措施有效性之船舶活動，並向委員會報告其對非締約方在公約區域捕魚所採取之行動。
- 2 考量「1982 年公約」第 116 至 119 條，委員會會員得個別或集體提醒任何非本公約締約方之國家或捕魚實體注意其任一活動，依委員會會員的觀點，已影響到本公約目標的履行。
- 3 委員會會員應個別或集體要求，有船舶在公約區域捕魚的非本公約締約方成為本公約之一方，或同意充分合作以履行委員會所通過之養護與管理措施。
- 4 委員會會員應個別或聯合尋求任一被視為有關港口國或市場國之非締約方合作，以確保本公約目標之遵從。

第 33 條

與其他協定之關係

- 1 本公約不應妨害締約方在「1982 年公約」或「1995 年協定」相關條款所反映之國際法的權利、管轄和義務。

- 2 本公約不應改變締約方根據與本公約相容之其他協定而產生的權利與義務，且該等權利與義務不影響其他締約方在本公約下享有其權利或履行其義務。

第 34 條

爭端解決

- 1 締約方應合作以預防爭端，並應盡其最大努力以友好方式解決任何爭端，包括凡在技術性爭端時，提交該爭端予特設專家小組。
- 2 倘爭端無法依第 1 項所列方法解決，則「1995 年協定」第 8 部分所列有關爭端解決之條文應比照適用於締約方間的任何爭端。
- 3 第 2 項規定不應影響任一締約方與「1995 年協定」或「1982 年公約」之相關地位。

第 35 條

修正

- 1 修正提案文件需在委員會會議召開前至少 90 天提供給執行長，執行長應迅速傳遞該文件影本給所有委員會會員。
- 2 委員會應經四分之三多數締約方之出席並投票贊成或否定，通過修正本公約提案。保管機構應毫無延遲地送交通過之修正案給所有締約方。
- 3 一修正案應在保管機構收到四分之三締約方書面同意通知書，並於通知書所載送交日期後 120 天對所有締約方生效，除非其他任一締約方於收到保管機構送交通知書後 90 天內，告知保管機構其反對該修正案。在此情況下，該修正案不應對該反對之任一締約方生效。反對該修正案之任一締約方得在任何時間撤回其異議。倘該修正案之所有異議均被撤回，該修正案應於保管機構收到最後一份撤回異議通知書所載送交日期後 120 天對所有締約方生效。
- 4 修正案依第 2 項通過並依第 3 項規定生效後，始成為締約方之任一國家、區域性經濟整合組織或第 1 條第 2 項 b 款所指的其他實體，應受修正後公約之拘束。
- 5 保管機構應迅速告知所有締約方其收到同意修正案之通知書、收到異議或撤回異議之通知書與修正生效之通知書。

第 36 條

簽署、批准、接受和贊同

- 1 本公約應開放簽署如下：
 - (a) 參與建立南太平洋區域漁業管理組織國際諮商之國家、區域性經濟整合組織與第 1 條第 2 項 b 款所指之其他實體；及
 - (b) 其管轄水域鄰接公約區域之其他任一國家或第 1 條第 2 項 b 款所指之其他任一實體。及應自 2010 年 2 月 1 日起 12 個月內持續開放簽署。
- 2 本公約須經簽署方之批准、接受或贊同。
- 3 本公約批准、接受或贊同之文書應存放於保管機構。

第 37 條

加入

- 1 本公約簽署關閉後，應開放給任一國家、區域性經濟整合組織或第 36 條第 1 項所指之其他實體，及其他任一國家或第 1 條第 2 項 b 款所指對漁業資源有利益之其他任一實體加入。
- 2 加入文書應存放於保管機構。

第 38 條

生效

- 1 本公約應在保管機構收到第 8 份批准、加入、接受或贊同文書後 30 天生效，並應包括以下之批准、加入、接受或贊同：
 - (a) 至少 3 個鄰接公約區域之沿海國，必須包括來自公約區域兩側之代表，即西經 120 度以東與西經 120 度以西；
 - (b) 至少 3 個鄰接公約區域且其漁船正在公約區域作業或曾在公約區域作業之非沿海國。
- 2 倘在通過 3 年內，本公約仍未依第 1 項規定生效，本公約應於收到第 10 份批准、加入、接受或贊同文書存放後 6 個月或依第 1 項規定生效，以時間先者為準。
- 3 在本公約生效後始批准、接受或贊同本公約之每一簽署方，本公約應在其批准、接受或贊同文書存放後 30 天對其生效。
- 4 在本公約生效後始加入本公約之每一國家或區域性經濟整合組織，本公約應在其加入文書存放後 30 天對其生效。
- 5 為本條目的，捕魚僅包括第 1 條第 1 項 g 款(i)目和(ii)目所述活動。

第 39 條

保管機構

- 1 紐西蘭政府應為本公約及其任何修正文書之保管機構。保管機構應送交本公約正式副本予所有簽署方，並依聯合國憲章第 102 條規定，向聯合國秘書長登記本公約。
- 2 保管機構應告知簽署本公約之所有簽署方和締約方，有關之簽署書和依第 36 條或第 37 條存放批准、加入、接受或贊同文書，及本公約之生效日期和對此之任何修正。

第 40 條

領地之參與

- 1 在負責其國際事務之締約方的適當授權下，委員會及其附屬機構應開放給本區域且對漁業資源有利益之領地參與。
- 2 領地參與的性質和範圍，應由締約方在考量國際法、本公約所涵蓋事務之權能分配，及此等領地行使本公約下權利與義務之能力演變情況下，在委員會個別議事規則中加以規定。該等議事規則應給予領地充分參與委員會及其附屬機構工作之權利，但無投票權或無權阻撓決定之共識、意見或建議。
- 3 雖有第 2 項規定，所有此類領地應有資格於委員會及其附屬機構的會議出席並發言。在履行其功能和作成決定時，委員會應考量所有參與者的利益。

第 41 條

退出

- 1 締約方得以書面通知保管機構退出本公約，並得說明其理由，未說明理由不影響其退出之效力。退出應在收到通知 1 年後生效，除非通知載明另一個較晚的日期。
- 2 締約方退出本公約不應影響該締約方在其退出生效前之財務義務。
- 3 締約方退出本公約不應在任何方面影響該締約方依本公約以外的國際法所應履行之本公約所載任何義務之責任。

第 42 條

終止

因退出導致低於 4 個締約方時，本公約應自動終止。

第 43 條

保留

不得對本公約提出保留或例外。

第 44 條

宣言和聲明

第 43 條並不排除一國、區域性經濟整合組織或第 1 條第 2 項(b)款所指之實體，於簽署、批准或加入本公約時，作出不論其措辭或任何名稱的宣言或聲明，旨在除其他外使該國國內法律及規章同本公約規定取得協調，但須這種宣言或聲明無意排除或修改本公約規定適用於該國、區域性經濟整合組織或實體之法律效力。

第 45 條

附件

附件構成本公約完整的一部分，除另有明文規定，否則提到本公約即包括本公約之相關附件。

下列全權代表各秉本國政府正式授權，爰簽字於本公約，以昭信守

2009 年 11 月 14 日訂於奧克蘭，以單一原件作成。

2010 年 2 月 1 日於威靈頓開放簽署。

澳洲：

貝里斯：

加拿大：

智利：

中國：

哥倫比亞：

庫克群島：

古巴：

丹麥之法羅群島：

厄瓜多：

歐盟：
斐濟：
法國：
印尼：
日本：
吉里巴斯：
韓國：
馬來西亞：
馬紹爾群島：
密克羅尼西亞：
諾魯：
紐西蘭：
尼威：
帛琉：
巴拿馬：
巴布亞紐幾內亞：
秘魯：
俄羅斯：
薩摩亞：
索羅門群島：
東加：
吐瓦魯：
烏克蘭：
大不列顛與北愛爾蘭聯合王國之皮特凱恩島、漢德森島、迪西島和奧埃諾島：
美國：
萬那杜：
委內瑞拉：

附件 1

東方和西方次區域性管理次委員會負責公約區域之部分

- 1 東方次區域性管理次委員會應負責對西經 120 度以東之公約區域部分，發展與建議養護和管理措施予委員會。
- 2 西方次區域性管理次委員會應負責對西經 120 度以西之公約區域部分，發展與建議養護和管理措施予委員會。

附件 2 審查小組

建立

- 1 依第 17 條第 5 項建立一審查小組，其組成應如下：
 - (a) 審查小組應包含從聯合國糧農組織依「1982 年公約」附件 8 第 2 條所載並持有的漁業專家名單中，或由執行長持有之類似名單中，任命 3 名代表組成。執行長所持之名單應從涵蓋本公約漁業之法律、科學或技術方面專長並為公眾認可，且其享有公正清廉最高聲譽之專家所建立。每一委員會會員應有權提名專家至多 5 名，並應提供每一提名人相關資格和經歷之資訊。
 - (b) 委員會主席和對此決定提出異議之委員會會員應各自任命一代表，提出異議之委員會會員所任命之代表姓名應列入依第 17 條第 2 項 a 款予執行長之異議通知書內。委員會主席所任命之代表姓名應在異議期屆滿後 10 日內通知提出異議之委員會會員。
 - (c) 經提出異議之委員會會員及委員會主席之協議，應於異議期屆滿後 20 日內任命第 3 位代表，該代表不應為提出異議之委員會會員的國民。倘在此期間未對任命第 3 位代表達成協議，常設仲裁法庭之秘書長應作出任命，除非同意此任命由其他個人或第三國為之。
 - (d) 第 3 位代表任命當日視為審查小組建立之日，且應由第 3 位代表擔任審查小組主席。
- 2 當不止一個委員會會員對同一決定以相同立場提出異議，或依第 17 條第 5 項 d 款之協議得由同一審查小組處理對同一決定持不同理由之異議時，審查小組應包含由第 1 項 a 款所述名單之 5 位代表組成，其組成應如下：
 - (a) 依照第 1 項 b 款，由最先提出異議之委員會會員任命 1 位代表、委員會主席於異議期屆滿後 10 日內任命 2 位代表、經稍後提出異議的委員會會員協商於異議期屆滿後 15 日內任命 1 位代表，及由全數提出異議之委員會會員與委員會主席協商在異議期屆滿後 20 日內任命 1 位代表。倘後面兩個期間，無法酌情對僅剩的兩項任命達成協議，常設仲裁法庭之秘書長應作出任命，除非同意此任命由其他個人或第三國為之。
 - (b) 任命最後 1 位代表當日視為審查小組建立之日，且應由全數有異議之委員會會員與委員會主席，依前述 a 款協議任命之代表擔任審查小組主席。
- 3 審查小組之任何空缺應依原先任命方式予以填補。

功能

- 4 審查小組應決定其議事規則。

- 5 審查小組建立後 30 天內應召開聽證會，其地點與日期由該小組訂定。
- 6 任一委員會會員得向審查小組提交一份與審查中異議相關的備忘錄，小組應允許任何此類會員有充分的機會表達意見。
- 7 除非審查小組因案件特別狀況而另有決定者外，審查小組的費用，包含其成員的酬金，應依下述方式負擔：
 - (a) 70%由提出異議之委員會會員負擔，或倘提出異議之委員會會員超過一位會員時，由渠等平均分擔；及
 - (b) 30%由委員會的年度預算負擔。
- 8 審查小組的發現與建議應依多數決，小組任何代表得附加個別或不同意見，有關審查小組程序問題之任何決定亦應依多數決。
- 9 審查小組應在建立後 45 天內，根據第 17 條第 5 項送交其發現與建議予執行長。

發現與建議

- 10 審查小組之發現與建議應如下處理：

歧視之發現

- (a) 倘審查小組發現遭異議之決定，在形式上或實質上對提出異議之委員會會員有所歧視，且替代措施與遭異議之決定有等同效果，該等替代措施應被視為同等的決定，並取代該決定而對委員會相關會員有拘束力。
- (b) 在後述 d 款和 e 款限制下，倘審查小組發現遭異議之決定，在形式上或實質上對提出異議之委員會會員有所歧視，且該替代措施經特定修改後在實行上與遭異議之決定等同效果，審查小組將建議該等修改。在收到審查小組之發現與建議時，提出異議之委員會會員應在 60 天內修改替代措施如審查小組所建議，或發動本公約下之爭端解決程序。當替代措施已依審查小組所建議加以修改，該等替代措施應被視為與遭異議之決定等同。該替代措施並以修改後格式取代遭異議之決定，而對委員會相關會員有拘束力。倘提出異議之委員會會員選擇發動本公約下之爭端解決程序，在等待爭端解決結果期間，該決定或經修改之替代措施均不應對提出異議之委員會會員有拘束力。
- (c) 在後述 d 款和 e 款限制下，倘審查小組發現遭異議之決定，在形式上或實質上對提出異議之委員會會員有無理由地歧視，但替代措施與遭異議之決定無等同效果，提出異議之委員會會員應在 60 天內採納審查小組所建議與遭異議之決定等同效果之措施，或發動本公約下之爭端解決程序。倘提出異議之委員會會員採納審查小組之建議措施，該等措施應被視為取代該決定，對提出異議之委員會會員有拘束力。倘提出異議之委員會會員選擇發動本公約下之爭端解決程序，在等待爭端解決結果期間，該決定或審查

小組之建議措施均不應對提出異議之委員會會員有拘束力。

- (d) 在審查小組依前述 b 款和 c 款作出發現和建議時，提出異議之委員會會員得自該等發現與建議通知書送交日起 30 天內，要求召開委員會特別會議。該特別會議應由主席在收到任一此等要求 45 天內召開。
- (e) 倘依前述 d 款召開之特別會議確認或修改審查小組之建議，為履行最初之發現與建議或修改或發動爭端解決程序之目的，前述 b 款和 c 款之 60 天期間應酌情自特別會議決議送交日起開始計算。倘特別會議決定不確認或不修改審查小組之建議，但廢除遭異議之決定，並以新的決定或最初決定之修正版本取代，該新決定或經修正決定應依第 17 條規定，對委員會會員有拘束力。

不一致之發現

- (f) 倘審查小組發現遭異議之決定與本公約或「1982 年公約」或「1995 年協定」所反映之相關國際法不一致時，主席應在收到審查小組之發現與建議通知日起 45 天內召開委員會特別會議，依據該等發現與建議重新考量該決定。
- (g) 倘委員會特別會議撤銷遭異議之決定，並作出新決定或修正最初之決定，該項新決定或經修正之決定應依第 17 條規定，對委員會會員有拘束力。
- (h) 倘委員會特別會議重申其最初的決定，提出異議之委員會會員應於 45 天內履行該項決定或發動本公約下之爭端解決程序。倘提出異議之委員會會員選擇發動本公約下之爭端解決程序，在等待爭端解決結果之期間，該決定不應對提出異議之委員會會員有拘束力。

無正當理由異議之發現

- (i) 倘審查小組發現遭異議之決定，在形式上或實質上對提出異議之委員會會員並無歧視，且與本公約或「1982 年公約」或「1995 年協定」所反映之相關國際法無不一致時，提出異議之委員會會員在後述 j 款限制下，在 45 天內履行該項決定或發動本公約下之爭端解決程序。倘提出異議之委員會會員選擇發動本公約下之爭端解決程序，在等待爭端解決結果之期間，該決定不應對提出異議之委員會會員有拘束力。
- (j) 倘審查小組發現遭異議之決定，在形式上或實質上對提出異議之委員會會員並無歧視，且與本公約或「1982 年公約」或「1995 年協定」所反映之相關國際法無不一致，但替代措施在實行上與遭異議之決定等同效果，且委員會應會如此接受。在委員會於下屆會議確認接受該等替代措施前，該等措施應取代該決定對提出異議之委員會會員有拘束力。

附件 3

對跨界漁業資源在整體適用分布範圍內 建立和履行總可捕量或總可容許漁獲努力量之程序

- 1 依第 23 條和第 24 條，所屬漁船在其國家管轄水域內或公約水域之鄰接公海捕撈跨界漁業資源的沿海國締約方及委員會會員應提供所有有關此漁業資源之相關科學、技術與統計資料予委員會，以供科學次委員會及酌情由紀律與技術次委員會考量。
- 2 依第 10 條，科學次委員會應評估整體分布範圍內跨界漁業資源狀態，並就其整體分布範圍內資源之適當總可捕量或總可容許漁獲努力量提供意見予委員會及相關次區域性管理次委員會。此意見應包括各種可能的估算，以建立不同水平的總可捕量或總可容許漁獲努力量，以達成委員會通過之任一管理策略或計畫目標的程度。
- 3 依第 12 條並基於科學次委員會之意見和紀律與技術次委員會之任一相關意見，有關的次區域性管理次委員會應對整體分布範圍內漁業資源的總可捕量或總可容許漁獲努力量向委員會提出建議及適當措施，以確保不超過總可捕量或總可容許漁獲努力量。
- 4 依第 16 條和第 20 條，委員會應基於科學次委員會和相關次區域性管理次委員會之建議與意見，及紀律與技術次委員會之任一相關意見，建立整體分布範圍內漁業資源之總可捕量或總可容許漁獲努力量，並通過適當措施以確保不超過總可捕量或總可容許漁獲努力量。
- 5 關於竹筴魚之養護與管理，委員會應依第 20 條及酌情優先考慮建立總可捕量，且不減損其他經適當考量並為確保此漁業資源養護及永續使用所通過之任何養護與管理措施。

附件 4 捕魚實體

- 1 自本公約生效後，任何有漁船捕撈或意圖捕撈漁業資源之捕魚實體，得向保管機構遞交書面文書，表達其堅決承諾接受本公約條文之拘束，並遵守依據本公約通過之養護及管理措施，此項承諾應於收到文書後 30 天生效。任一此類捕魚實體得向保管機構遞交退出之書面通知，退出應在收到通知書一年後生效，除非該通知書中特別載明一較晚的日期。
- 2 前述第 1 項所指捕魚實體得向保管機構遞交書面文書，表達其堅決承諾接受依第 35 條第 3 項進行修正之公約條文拘束，此項承諾應自第 35 條第 3 項所指日期或本項所指收到書面通知的日期生效，以日期晚者為準。
- 3 依第 1 項已表達其堅決承諾接受本公約條文之拘束並遵守依本公約通過之養護及管理措施的捕魚實體，必須遵守委員會會員的義務，並得依本公約條文參與委員會的工作，包括決策。為本公約之目的，提到委員會或委員會會員包括此類捕魚實體。
- 4 倘一爭端涉及已表達其承諾願依本附件受本公約條文拘束之捕魚實體，且該爭端無法以友好方式解決，該爭端應在爭端任何一方要求下，根據常設仲裁法庭之相關規則提請最終且具拘束力之仲裁。
- 5 本附件有關捕魚實體參與之規定，僅為本公約之目的而訂。

**Convention on the Conservation and Management of
High Seas Fishery Resources in the South Pacific Ocean**

The Contracting Parties,

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

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

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

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

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

Noting the need for regional fisheries management organisations and arrangements to undertake performance reviews in order to assess the degree to which they are attaining their respective conservation and management objectives;

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

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

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

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

Have agreed as follows:

Article 1 DEFINITIONS

- 1 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) '1995 Agreement' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;
 - (c) 'Commission' means the Commission of the South Pacific Regional Fisheries Management Organisation established by Article 6;
 - (d) 'Convention Area' means the Area to which this Convention applies in accordance with Article 5;
 - (e) 'Code of Conduct' means the Code of Conduct for Responsible Fisheries adopted by the 28th session of the Conference of the Food and Agriculture Organisation of the United Nations (FAO) on 31 October 1995;
 - (f) 'fishery resources' means all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission; but excluding:

- (i) sedentary species in so far as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;
 - (ii) highly migratory species listed in Annex I of the 1982 Convention;
 - (iii) anadromous and catadromous species; and
 - (iv) marine mammals, marine reptiles and sea birds;
- (g) 'fishing' means:
- (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose;
 - (iii) transshipment and any operation at sea in support of, or in preparation for, any activity described in this definition; and
 - (iv) the use of any vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition;
- but does not include any operation related to emergencies involving the health or safety of crew members or the safety of a vessel;
- (h) 'fishing vessel' means any vessel used or intended for fishing, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (i) 'flag State' means, unless otherwise indicated:
- (i) a State whose fishing vessels are entitled to fly its flag; or
 - (ii) a regional economic integration organisation in which fishing vessels are entitled to fly the flag of a member State of that regional economic integration organisation;
- (j) 'IUU fishing' means activities as referred to in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and other activities as may be decided by the Commission;
- (k) 'nationals' includes both natural and legal persons;
- (l) 'port' includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or re-supplying;
- (m) 'regional economic integration organisation' means a regional economic integration organisation to which its member States

have transferred competence over matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters;

- (n) 'serious violation' has the same meaning as that set out in Article 21 paragraph 11 of the 1995 Agreement and such other violations as may be specified by the Commission; and
- (o) 'transshipment' means the unloading of all or any of the fishery resources or fishery resource products derived from fishing in the Convention Area on board a fishing vessel to another fishing vessel either at sea or in port.

2

- (a) 'Contracting Party' means any State or regional economic integration organisation which has consented to be bound by this Convention and for which the Convention is in force.
- (b) This Convention applies, *mutatis mutandis*, to any entity referred to in Article 305, paragraph 1(c), (d) and (e), of the 1982 Convention which becomes a party to this Convention, and to that extent "Contracting Party" refers to any such entity.

Article 2 OBJECTIVE

The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

Article 3 CONSERVATION AND MANAGEMENT PRINCIPLES AND APPROACHES

1 In giving effect to the objective of this Convention and carrying out decision making under this Convention, the Contracting Parties, the Commission and subsidiary bodies established under Article 6 paragraph 2 and Article 9 paragraph 1 shall:

- (a) apply, in particular, the following principles;
 - (i) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account best international practices;
 - (ii) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-

target and associated or dependent species and the general obligation to protect and preserve the marine environment;

- (iii) overfishing and excess fishing capacity shall be prevented or eliminated;
 - (iv) full and accurate data on fishing, including information relating to impacts on the marine ecosystems in which fishery resources occur, shall be collected, verified, reported and shared in a timely and appropriate manner;
 - (v) decisions shall be based on the best scientific and technical information available and the advice of all relevant subsidiary bodies;
 - (vi) cooperation and coordination among Contracting Parties shall be promoted to ensure that conservation and management measures adopted by the Commission and conservation and management measures applied in respect of the same fishery resources in areas under national jurisdiction are compatible;
 - (vii) marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance;
 - (viii) the interests of developing States, in particular the least developed among them and small island developing States, and of territories and possessions, and the needs of developing State coastal communities, shall be recognised;
 - (ix) effective compliance with conservation and management measures shall be ensured and sanctions for any violations shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of the benefits accruing from their illegal activities; and
 - (x) pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised; and
- (b) apply the precautionary approach and an ecosystem approach in accordance with paragraph 2.

2

- (a) The precautionary approach as described in the 1995 Agreement and the Code of Conduct shall be applied widely to

the conservation and management of fishery resources in order to protect those resources and to preserve the marine ecosystems in which they occur, and in particular the Contracting Parties, the Commission and subsidiary bodies shall:

- (i) be more cautious when information is uncertain, unreliable, or inadequate;
 - (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and
 - (iii) take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the Code of Conduct.
- (b) An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

Article 4 COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES

1 The Contracting Parties recognise the need to ensure compatibility of conservation and management measures established for fishery resources that are identified as straddling areas under the national jurisdiction of a coastal State Contracting Party and the adjacent high seas of the Convention Area and acknowledge their duty to cooperate to this end.

2 Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of straddling fishery resources in their entirety. In developing compatible conservation and management measures for straddling fishery resources Contracting Parties shall:

- (a) take into account the biological unity and other biological characteristics of the fishery resources and the relationships

between the distribution of the resources, the fishing activities for those resources and the geographical particularities of the region concerned, including the extent to which the fishery resources occur and are fished in areas under national jurisdiction;

- (b) take into account the respective dependence of the coastal States and the States fishing on the high seas on the fishery resources concerned; and
- (c) ensure that such measures do not result in harmful impact on the living marine resources as a whole in the Convention Area.

3 The Commission's initial conservation and management measures shall take due account of, and not undermine the effectiveness of, existing conservation and management measures established by relevant coastal State Contracting Parties in respect of areas under national jurisdiction and by Contracting Parties in respect of their flag vessels fishing in the adjacent high seas of the Convention Area.

Article 5 AREA OF APPLICATION

1 Except as otherwise provided, this Convention applies to waters of the Pacific Ocean beyond areas of national jurisdiction in accordance with international law:

- (a) east of a line extending south along the 120° meridian of east longitude from the outer limit of the national jurisdiction of Australia off the south coast of Western Australia to the intersection with the 55° parallel of south latitude; then due east along the 55° parallel of south latitude to the intersection with the 150° meridian of east longitude; then due south along the 150° meridian of east longitude to the intersection with the 60° parallel of south latitude;
- (b) north of a line extending east along the 60° parallel of south latitude from the 150° meridian of east longitude to the intersection with the 67° 16' meridian of west longitude;
- (c) west of a line extending north along the 67° 16' meridian of west longitude from the 60° parallel of south latitude to its intersection with the outer limit of the national jurisdiction of Chile then along the outer limits of the national jurisdictions of Chile, Peru, Ecuador and Colombia to the intersection with the 2° parallel of north latitude; and

- (d) south of a line extending west along the 2° parallel of north latitude (but not including the national jurisdiction of Ecuador (Galapagos Islands)) to the intersection with the 150° meridian of west longitude; then due north along the 150° meridian of west longitude to its intersection with 10° parallel of north latitude, then west along the 10° parallel of north latitude to its intersection with the outer limits of the national jurisdiction of the Marshall Islands, and then generally south and around the outer limits of the national jurisdictions of Pacific States and territories, New Zealand and Australia until it connects to the commencement of the line described in paragraph (a) above.

2 The Convention shall also apply to waters of the Pacific Ocean beyond areas of national jurisdiction bounded by the 10° parallel of north latitude and the 20° parallel of south latitude and by the 135° meridian of east longitude and the 150° meridian of west longitude.

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

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

Article 6 THE ORGANISATION

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

2 The Organisation shall consist of:

- (a) a Commission;
- (b) a Scientific Committee;
- (c) a Compliance and Technical Committee;
- (d) an Eastern Sub-regional Management Committee;

- (e) a Western Sub-regional Management Committee;
- (f) a Finance and Administration Committee;
- (g) a Secretariat,

and any other subsidiary bodies that the Commission may, from time to time, establish in accordance with Article 9 paragraph 1 to assist it in its work.

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

4 The Secretariat of the Organisation shall be in New Zealand or at such other place as may be decided by the Commission.

Article 7 THE COMMISSION

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

2 The Commission shall elect a Chairperson and a Vice-Chairperson from among the Contracting Parties, 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 two terms in succession in the same capacity. The Chairperson and Vice-Chairperson shall be representatives of different Contracting Parties.

3 The first meeting of the Commission shall take place no later than 12 months following the entry into force of this Convention. Thereafter the Chairperson of the Commission shall convene an annual meeting, unless the Commission decides otherwise, at a time and location to be decided by the Commission. The Commission shall hold such other meetings as may be necessary to carry out its functions under this Convention.

4 The principle of cost effectiveness shall apply to the frequency, duration and scheduling of meetings of the Commission and its subsidiary bodies.

Article 8
FUNCTIONS OF THE COMMISSION

The Commission shall, in accordance with the objective, principles and approaches, and specific provisions of this Convention, exercise the following functions:

- (a) adopt conservation and management measures to achieve the objective of this Convention, including, as appropriate, conservation and management measures for particular fish stocks;
- (b) determine the nature and extent of participation in fishing for fishery resources including, as appropriate, for particular fish stocks;
- (c) develop rules for the collection, verification, reporting, storing and dissemination of data;
- (d) promote the conduct of scientific research to improve knowledge of fishery resources and marine ecosystems in the Convention Area and of the same fishery resources in adjacent waters under national jurisdiction, and, in collaboration with the Scientific Committee, establish procedures for the conduct of fishing for fishery resources for scientific purposes in the Convention Area;
- (e) cooperate and exchange data with members of the Commission and with relevant organisations, coastal States, territories and possessions;
- (f) promote compatibility of conservation and management measures in the Convention Area, adjacent areas under national jurisdiction and adjacent areas of high seas;
- (g) develop and establish effective monitoring, control, surveillance, compliance and enforcement procedures, including non-discriminatory market-related and trade-related measures;
- (h) develop processes in accordance with international law to assess flag State performance with respect to the implementation of their obligations under this Convention and adopt proposals, if appropriate, to promote implementation of such obligations;
- (i) adopt measures to prevent, deter and eliminate IUU fishing;
- (j) develop rules for cooperating non-Contracting Party status under this Convention;

- (k) review the effectiveness of the provisions of this Convention and the conservation and management measures adopted by the Commission in meeting the objective of this Convention;
- (l) supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;
- (m) guide the Commission's subsidiary bodies in their work;
- (n) adopt by consensus the budget of the Organisation, the financial regulations of the Organisation and any amendments thereto, and its rules of procedure, which may include procedures for taking and recording decisions intersessionally;
- (o) adopt and amend as necessary any other regulations necessary for the exercise of its functions and those of its subsidiary bodies; and
- (p) exercise any other function and take any other decisions that may be necessary for achieving the objective of this Convention.

Article 9 SUBSIDIARY BODIES

1 The Commission may establish other subsidiary bodies, additional to the Scientific Committee, the Compliance and Technical Committee, the Eastern Sub-regional Management Committee, the Western Sub-regional Management Committee and the Finance and Administration Committee as may be required. Such additional subsidiary bodies may be established on a permanent or temporary basis taking into account cost implications.

2 In establishing such additional subsidiary bodies the Commission shall provide specific terms of reference and methods of work, provided always that such specific terms of reference are consistent with the objective and the conservation and management principles and approaches of this Convention and with the 1982 Convention and the 1995 Agreement. Such terms of reference and methods of work may be reviewed and amended as appropriate by the Commission from time to time.

3 All subsidiary bodies shall report, advise and make recommendations to the Commission and contribute to regular reviews of the effectiveness of conservation and management measures adopted by the Commission.

4 In carrying out their functions, all subsidiary bodies shall take into consideration the relevant work of other subsidiary bodies established by the Commission, and as appropriate the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.

5 All subsidiary bodies may establish working groups. Subsidiary bodies may also seek external advice as required in accordance with any general or specific guidance provided by the Commission.

6 All subsidiary bodies shall operate under the rules of procedure of the Commission unless otherwise decided by the Commission.

Article 10 SCIENTIFIC COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Scientific Committee shall be to:

- (a) plan, conduct and review scientific assessments of the status of fishery resources including, in cooperation with the relevant coastal State Contracting Party or Parties, fishery resources that straddle the Convention Area and areas under national jurisdiction;
- (b) provide advice and recommendations to the Commission and its subsidiary bodies based on such assessments including, as appropriate:
 - (i) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
 - (ii) management strategies or plans for fishery resources based on such reference points; and
 - (iii) analyses of conservation and management alternatives, such as the establishment of total allowable catch or total allowable fishing effort at different levels, that estimate the extent to which each alternative would achieve the objective or objectives of any management strategy or plan adopted, or under consideration, by the Commission;
- (c) provide advice and recommendations to the Commission and its subsidiary bodies on the impact of fishing on the marine ecosystems in the Convention Area including advice and recommendations on the identification and distribution of

vulnerable marine ecosystems, the likely impacts of fishing on such vulnerable marine ecosystems and measures to prevent significant adverse impacts on them;

- (d) encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources and the marine ecosystems in the Convention Area including knowledge in relation to fishery resources straddling the Convention Area and areas under national jurisdiction; and
- (e) provide such other scientific advice to the Commission and its subsidiary bodies as it considers appropriate, or as may be requested by the Commission.

3 The rules of procedure of the Commission shall provide that where the Scientific Committee is unable to provide its advice by consensus, it shall set out in its report the different views of its members. The reports of the Scientific Committee shall be made publicly available.

4 The Commission, taking into account any recommendations from the Scientific Committee, may engage the services of scientific experts to provide information and advice on the fishery resources and marine ecosystems in the Convention Area and any related matters that may be relevant to the Commission's consideration of conservation and management measures.

5 The Commission shall make appropriate arrangements for the periodic independent peer review of the Scientific Committee's reports, advice and recommendations.

Article 11 COMPLIANCE AND TECHNICAL COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Compliance and Technical Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Compliance and Technical Committee shall be to:

- (a) monitor and review the implementation of, and compliance with, conservation and management measures adopted under this Convention and provide advice and recommendations to the Commission;
- (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 of and compliance with the provisions of this Convention and the conservation and management measures adopted, or under consideration, by the Commission; and

- (c) review the implementation of cooperative measures for monitoring, control, and surveillance and enforcement adopted by the Commission and provide advice and recommendations to the Commission.

Article 12 EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES

1 The Eastern and Western Sub-regional Management Committees shall, on their own initiative or at the request of the Commission, develop and make recommendations to the Commission on conservation and management measures, in accordance with Article 20, and on participation in fishing for fishery resources, in accordance with Article 21, for the parts of the Convention Area described in Annex I. Such recommendations shall be consistent with any measures of general application adopted by the Commission and shall require the consent of the coastal State Contracting Party or Parties concerned on the matters on which such consent is required under Article 20 paragraph 4 and Article 21 paragraph 2. Where appropriate the Committees shall make all efforts to coordinate their recommendations.

2 The Commission may by consensus amend Annex I at any time to adjust the geographic coordinates it contains. Such amendment shall take effect from the date of its adoption, or any other date specified in the amendment.

3 The Commission may decide to assign to one Sub-regional Management Committee primary responsibility for developing and making recommendations to the Commission in accordance with this Article for a specific fishery resource even if the range of that resource should extend beyond the part of the Convention Area for which that Committee has responsibilities in accordance with Annex I.

4 Each Committee shall develop its recommendations on the basis of the advice and recommendations of the Scientific Committee.

5

- (a) Members of the Commission situated adjacent to the part of the Convention Area for which a Committee has responsibility in accordance with this Article, or whose fishing vessels:

(i) are currently fishing in that area; or
(ii) have fished in that area within the past two years; or
(iii) are fishing for a specific fishery resource assigned to that Committee pursuant to paragraph 3, including in areas under national jurisdiction adjacent to the Convention Area shall be members of that Committee.

(b) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) that gives notice to the Secretariat of an intention to fish within two years of the notice in the part of the Convention Area for which a Committee has responsibility in accordance with this Article, shall become a member of that Committee. If the notifying member of the Commission does not fish in that part of the Convention Area within two years of the notice, it shall cease to be a member of that Committee.

(c) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) or (b) may send a representative to participate in the work of that Committee.

(d) For the purposes of this paragraph, "fishing" includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).

6 The Eastern and Western Sub-regional Management Committees shall make all efforts to adopt their recommendations to the Commission by consensus. If all efforts to reach agreement on a recommendation by consensus have been exhausted, recommendations shall be adopted by a two-thirds majority of the members of the relevant Sub-regional Management Committee. Reports to the Commission may include majority and minority views.

7 The recommendations made in accordance with this Article will be the basis of conservation and management measures and decisions referred to in Articles 20 and 21, respectively, that shall be adopted by the Commission.

8 Any extraordinary costs incurred for the work of either of the Sub-regional Management Committees shall be borne by the members of the relevant Committee.

Article 13
FINANCE AND ADMINISTRATION COMMITTEE

1 Each member of the Commission shall be entitled to appoint one representative to the Finance and Administration Committee who may be accompanied by alternate representatives and advisers.

2 The functions of the Finance and Administration Committee shall be to advise the Commission on the budget, on the time and place of meetings of the Commission, on publications of the Commission, on matters relating to the Executive Secretary and the staff of the Secretariat and on such other financial and administrative matters as may be referred to it by the Commission.

Article 14
SECRETARIAT

1 The Secretariat shall perform the functions delegated to it by the Commission.

2 The chief administrative officer of the Secretariat shall be the Executive Secretary, who shall be appointed with the approval of the Contracting Parties on such terms as they may determine.

3 Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such staff regulations as may be determined by the Commission.

4 The Executive Secretary shall ensure the effective functioning of the Secretariat.

5 The Secretariat to be established under this Convention shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions and more specifically the availability of services under contractual arrangement.

Article 15
BUDGET

1 The Commission, at its first meeting, shall adopt a budget to fund the Commission and its subsidiary bodies, and shall also adopt financial regulations. All decisions on the budget and financial regulations, including decisions relating to the contributions of members of the Commission and

the formula for calculating such contributions, shall be taken by consensus.

2 Each member of the Commission shall contribute to the budget. The amount of the annual contributions due from each member of the Commission shall be a combination of a variable fee based on its total catch of such fishery resources as may be specified by the Commission and a basic fee and shall take account of its economic status. For a member of the Commission whose only catch in the Convention Area is that of its territory or territories adjoining the Convention Area the economic status shall be that of the territory concerned. The Commission shall adopt and may amend a formula for the calculation of these contributions which shall be set out in the financial regulations of the Commission.

3 The Commission may request and accept financial contributions and other forms of assistance from organisations, individuals and other sources for purposes connected with the fulfilment of its functions.

4 The Executive Secretary shall submit a draft of the annual budget for the two succeeding financial years to each member of the Commission together with a schedule of contributions, not less than 60 days before the meeting of the Finance and Administration Committee where the Committee will adopt its recommendations to the Commission. In preparing the draft budget the Secretariat shall take full account of the need for cost effectiveness together with the guidance of the Commission as to the meetings of the subsidiary bodies that may be required in the budget year. Each annual meeting of the Commission shall adopt a budget for the succeeding financial year.

5 If the Commission is unable to adopt a budget, the level of contributions to the administrative budget of the Commission shall be determined in accordance with the budget for the preceding year for the purposes of meeting the administrative expenses of the Commission for the following year until such time as a new budget can be adopted by consensus.

6 Following the annual meeting of the Commission, the Executive Secretary shall notify each member of the Commission of its contribution due as calculated under the formula adopted by the Commission pursuant to paragraph 2 and as soon as possible thereafter each member of the Commission shall pay its contribution to the Organisation.

7 Contributions shall be payable in the currency of the country in which the Secretariat of the Organisation is located, except if otherwise authorised by the Commission.

8 A Contracting Party that becomes party to this Convention during the course of a financial year shall contribute in respect of that financial year a part of the contribution calculated in accordance with the provisions of this Article that is proportionate to the number of complete months remaining in the year from the date that the Convention enters into force for that Party.

9 Unless otherwise decided by the Commission, a member of the Commission that is in arrears with its payment of any monies owed to the Organisation by more than two years shall not participate in the taking of any decisions by the Commission until it has paid all monies owed by it to the Commission.

10 The financial activities of the Organisation shall be conducted in accordance with financial regulations adopted by the Commission and shall be subject to an annual audit by independent auditors appointed by the Commission.

Article 16 DECISION MAKING

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

2 Except where this Convention expressly provides that a decision shall be taken by consensus, if the Chairperson considers that all efforts to reach a decision by consensus have been exhausted:

- (a) decisions of the Commission on questions of procedure shall be taken by a majority of the members of the Commission casting affirmative or negative votes; and
- (b) decisions on questions of substance shall be taken by a three-fourths majority of the members of the Commission casting affirmative or negative votes.

3 When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.

Article 17
IMPLEMENTATION OF COMMISSION DECISIONS

1 Decisions on questions of substance adopted by the Commission shall become binding on the members of the Commission in the following manner:

- (a) the Executive Secretary shall promptly notify each decision to all members of the Commission; and
- (b) subject to paragraph 2, the decision shall become binding upon all members of the Commission 90 days after the date of transmittal specified in the notification pursuant to subparagraph (a) "the date of notification".

2

- (a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification "the objection period". In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.
- (b) A member of the Commission that presents an objection shall at the same time:
 - (i) specify in detail the grounds for its objection;
 - (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and
 - (iii) advise the Executive Secretary of the terms of such alternative measures.
- (c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.

3 Any member of the Commission that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that member in accordance with paragraph 1(b) or on the date of the withdrawal of the objection whichever is the later.

4 The Executive Secretary shall promptly notify all members of the Commission of:

- (a) the receipt and withdrawal of each objection; and
- (b) the grounds for that objection and the alternative measures adopted, or proposed to be adopted, pursuant to paragraph 2.

5

- (a) When an objection is presented by a member of the Commission pursuant to paragraph 2, a Review Panel shall be established within 30 days after the end of the objection period. The Review Panel shall be established in accordance with the procedures in Annex II.
- (b) The Executive Secretary shall promptly notify all members of the Commission of the establishment of the Review Panel.
- (c) If two or more members of the Commission present objections based on the same grounds, those objections shall be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2.
- (d) If two or more members of the Commission present objections on different grounds, those objections may, with the consent of the members of the Commission concerned, be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2. In the absence of such consent, objections on different grounds shall be dealt with by separate Review Panels.
- (e) Within 45 days after its establishment, the Review Panel shall transmit to the Executive Secretary its findings and recommendations on whether the grounds specified for the objection presented by the member or members of the Commission are justified and whether the alternative measures adopted are equivalent in effect to the decision to which objection has been presented.
- (f) The Executive Secretary shall promptly notify all members of the Commission of the findings and recommendations of the Review Panel. The findings and recommendations of the Review Panel shall be dealt with and have effect as set out in Annex II.

6 Nothing in this Article limits the right of a member of the Commission at any time to refer a dispute concerning the interpretation or application of this Convention for binding settlement in accordance with the provisions of this Convention relating to the settlement of disputes.

Article 18
TRANSPARENCY

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

2 All meetings of the Commission and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 unless otherwise decided by the Commission. The Commission shall publish its reports and conservation and management measures when adopted and shall maintain a public record of all reports and conservation and management measures in force in the Convention Area.

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

4 Representatives of non-Contracting Parties, relevant intergovernmental organisations and non-governmental organisations, including environmental organisations and fishing industry organisations with an interest in matters pertaining to the Commission shall be afforded the opportunity to take part in the meetings of the Commission and of its subsidiary bodies, as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

Article 19
RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES

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

2 In giving effect to the duty to cooperate in the establishment of conservation and management measures for fishery resources covered by

this Convention, the members of the Commission shall take into account the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, in particular:

- (a) the vulnerability of such developing States and territories and possessions which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or part thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous people in such developing States Parties, and territories and possessions; 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 State Contracting Parties, and territories and possessions.

3 The members of the Commission shall cooperate either directly or through the Commission and other regional or sub-regional organisations to:

- (a) enhance the ability of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, to conserve and manage fishery resources and to develop their own fisheries for such resources;
- (b) assist developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, to enable them to participate in fishing for fishery resources, including facilitating access to such fishery resources consistent with Article 3 and Article 21; and
- (c) facilitate the participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in the work of the Commission and its subsidiary bodies.

4 Cooperation for the purposes set out in this Article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall, *inter alia*, be directed towards:

- (a) improved conservation and management of fishery resources through collection, reporting, verification, exchange and analysis of fisheries data and related information;
- (b) stock assessment and scientific research; and
- (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

5 The Commission shall establish a fund to facilitate the effective participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and, as appropriate, territories and possessions in the region, in the work of the Commission and its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

Article 20

CONSERVATION AND MANAGEMENT MEASURES

1 The conservation and management measures adopted by the Commission shall include measures to:

- (a) ensure the long-term sustainability of fishery resources and promote the objective of their responsible utilisation;
- (b) prevent or eliminate over fishing and excess fishing capacity to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (c) maintain or restore populations of non-target and associated or dependent species to above levels at which their reproduction may become seriously threatened; and
- (d) protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems.

2 The specific conservation and management measures adopted by the Commission shall, as appropriate, include the determination of:

- (a) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
- (b) the actions to be taken if those reference points are approached or exceeded;
- (c) the nature and extent of fishing for any fishery resource including the establishment of a total allowable catch or total allowable fishing effort;
- (d) the general or specific locations in which fishing may or may not occur;
- (e) the periods in which fishing may or may not occur;
- (f) the size limits in respect of the catch which may be retained; and
- (g) the types of fishing gear, fishing technology, or fishing practices which may be used when fishing.

3 In determining a total allowable catch or total allowable fishing effort for any fishery resource under paragraph 2 (c), the Commission shall take into account the following factors:

- (a) the status and stage of development of the fishery resource;
- (b) fishing patterns of the fishery resource;
- (c) catch of the same fishery resource within areas under national jurisdiction where relevant;
- (d) an allowance for discards and any other incidental mortality;
- (e) catch of non-target and associated or dependent species and impacts on the marine ecosystems in which the fishery resource occurs;
- (f) relevant ecological and biological factors limiting the nature of fishery resources that may be harvested;
- (g) relevant environmental factors, including trophic interactions which may have an effect upon the fishery resource and non-target and associated or dependent species; and
- (h) as appropriate, relevant conservation and management measures adopted by other intergovernmental organisations.

The Commission shall regularly review the total allowable catch or total allowable fishing effort established for any fishery resource.

4

- (a) For a fishery resource that straddles the Convention Area and an area under the national jurisdiction of a coastal State Contracting Party or Parties:
 - (i) the Commission shall establish a total allowable catch or total allowable fishing effort and other conservation and management measures, as appropriate, for the Convention Area. The Commission and the coastal State Contracting Party or Parties concerned shall cooperate in the coordination of their respective conservation and management measures in accordance with Article 4 of this Convention;
 - (ii) with the express consent of the coastal State Contracting Party or Parties concerned, the Commission may establish, in accordance with Annex III of this Convention, and as appropriate, a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource; and
 - (iii) in the case where one or more of the coastal State Contracting Parties does not consent to a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource, the Commission may establish, as appropriate, a total allowable catch or total allowable fishing effort that will apply in the areas of national jurisdiction of the consenting coastal State Contracting Party or Parties and the Convention Area. Annex III will apply, *mutatis mutandis*, to the establishment of this total allowable catch or total allowable fishing effort by the Commission.
- (b) In cases covered by subparagraph (a) (ii) or (a) (iii), other complementary conservation and management measures may be adopted so as to ensure sustainable conservation and management of the fishery resource throughout its range. To give effect to this paragraph, such measures may be adopted, in accordance with the principles of compatibility outlined in Article 4, by the Commission for the high seas and the coastal State Contracting Party or Parties concerned for the areas under national jurisdiction; and by the Commission, with the consent of the coastal State Contracting Party or Parties concerned, for measures that will apply throughout the range of the fishery resource.
- (c) All conservation and management measures, including a total allowable catch or total allowable fishing effort, adopted by the

Commission in accordance with subparagraphs (a) (ii), (a) (iii) and (b) are without prejudice to and do not affect the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction in accordance with international law, as reflected in the relevant provisions of the 1982 Convention and the 1995 Agreement, and do not in any other respect affect the Area of application of this Convention established by Article 5.

5

- (a) The Commission shall adopt measures to be applied on an emergency basis, in accordance with Article 16, including intersessionally, if necessary, where fishing presents a serious threat to the sustainability of fishery resources or the marine ecosystem in which these fishery resources occur or when a natural phenomenon or human caused disaster has, or is likely to have, a significant adverse impact on the status of fishery resources to ensure that fishing does not exacerbate such threat or adverse impact.
- (b) Measures taken on an emergency basis shall be based on the best scientific evidence available. Such measures shall be temporary and must be reconsidered for decision at the next meeting of the Commission following their adoption. The measures shall become binding on the members of the Commission in accordance with Article 17 paragraph 1. Such measures shall not be open to the objection procedure in Article 17 paragraph 2 but may be the subject of dispute settlement procedures under this Convention.

6 The conservation and management measures adopted by the Commission shall be progressively developed and integrated into management strategies or plans that set out the management objectives for each fishery resource, the reference points against which to measure progress in relation to those objectives, the indicators to be used in relation to those reference points and the measures to be taken in response to particular indicator levels.

Article 21

PARTICIPATION IN FISHING FOR FISHERY RESOURCES

1 When taking decisions regarding participation in fishing for any fishery resource, including the allocation of a total allowable catch or total allowable fishing effort, the Commission shall take into account the status

of the fishery resource and the existing level of fishing effort for that resource and the following criteria to the extent relevant:

- (a) historic catch and past and present fishing patterns and practices in the Convention Area;
- (b) compliance with the conservation and management measures under this Convention;
- (c) demonstrated capacity and willingness to exercise effective flag State control over fishing vessels;
- (d) contribution to the conservation and management of fishery resources, including the provision of accurate data and effective monitoring, control, surveillance and enforcement;
- (e) the fisheries development aspirations and interests of developing States in particular small island developing States and of territories and possessions in the region;
- (f) the interests of coastal States, and in particular developing coastal States and territories and possessions, in a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
- (g) the needs of coastal States and of territories and possessions whose economies are dependent mainly on the exploitation of and fishing for a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
- (h) the extent to which a member of the Commission is utilising the catch for domestic consumption and the importance of the catch to its food security;
- (i) contribution to the responsible development of new or exploratory fisheries in accordance with Article 22; and
- (j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.

2 When the Commission establishes a total allowable catch or total allowable fishing effort for any fishery resource pursuant to Article 20 paragraph 4 (a) (ii) or (iii), it may, with the express consent of the coastal State Contracting Party or Parties concerned, also take decisions regarding participation in fishing for that resource throughout its relevant range.

3 In taking decisions under paragraph 2, the Commission shall take into account the historic catch and past and present fishing patterns and

practices throughout the relevant range of the fishery resource concerned and the criteria listed in paragraph 1(b) – (j).

4 When the consent of the coastal State Contracting Party or Parties concerned is not provided pursuant to paragraph 2:

- (a) the Commission shall take decisions, in accordance with paragraph 1, regarding allocation of the portion of the total allowable catch or total allowable fishing effort established pursuant to Article 20 paragraph 4 (a) (i) that may be taken in the Convention Area; and
- (b) the Commission and the coastal State Contracting Party or Parties concerned shall cooperate in accordance with Article 4.

5 In taking decisions under this Article, the Commission may also have regard, as appropriate, to performance with respect to other international fisheries management regimes.

6 The Commission shall, when appropriate, review decisions regarding participation in fishing for fishery resources, including the allocation of a total allowable catch or total allowable fishing effort, taking into account the provisions of this Article and the interests of new Contracting Parties.

Article 22 NEW OR EXPLORATORY FISHERIES

1 A fishery that has not been subject to fishing or has not been subject to fishing with a particular gear type or technique for ten years or more shall be opened as a fishery or opened to fishing with such gear type or technique only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery, and, as appropriate, non-target and associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities.

2 Such preliminary conservation and management measures, which may include requirements regarding notification of intention to fish, the establishment of a development plan, mitigation measures to prevent adverse impacts on marine ecosystems, use of particular fishing gear, the presence of observers, the collection of data, and the conduct of research or exploratory fishing, shall be consistent with the objective and the conservation and management principles and approaches of this Convention. The measures shall ensure that the new fishery resource is developed on a precautionary and gradual basis until sufficient information

is acquired to enable the Commission to adopt appropriately detailed conservation and management measures.

3 The Commission may, from time to time, adopt standard minimum conservation and management measures that are to apply in respect of some or all new fisheries prior to the commencement of fishing for such new fisheries.

Article 23

DATA COLLECTION, COMPILATION AND EXCHANGE

1 To enhance the information base for the conservation and management of fishery resources, non-target and associated or dependent species and the protection of the marine ecosystems in which those resources occur; and to contribute to the elimination or reduction of IUU fishing and its negative impact on those resources, the Commission shall, taking full account of Annex I of the 1995 Agreement, develop standards, rules and procedures for, *inter alia*:

- (a) the collection, verification and timely reporting to the Commission of all relevant data by members of the Commission;
- (b) the compilation and management by the Commission of accurate and complete data to facilitate effective stock assessment and ensure that the provision of the best scientific advice is enabled;
- (c) the security of, access to and dissemination of data while maintaining confidentiality where appropriate;
- (d) the exchange of data among members of the Commission, and with other regional fisheries management organisations, and other relevant organisations including data concerning vessels engaged in IUU fishing, and, as appropriate, concerning the beneficial ownership of such vessels, with a view to consolidating such information into a centralised format for dissemination as appropriate;
- (e) the facilitation of coordinated documentation and data sharing between regional fisheries management organisations, including procedures to exchange data on vessel registers, catch documentation and trade tracking schemes where applicable; and
- (f) regular audits of Commission member compliance with data collection and exchange requirements, and for addressing any non-compliance identified in such audits.

2 The Commission shall ensure that data are publicly available concerning the number of vessels operating in the Convention Area, the status of fishery resources managed under this Convention, fishery resource assessments, research programmes in the Convention Area, and cooperative initiatives with regional and global organisations.

Article 24

OBLIGATIONS OF MEMBERS OF THE COMMISSION

1 Each member of the Commission shall, in respect of its fishing activities within the Convention Area:

- (a) implement this Convention and any 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 IUU fishing; and
- (d) collect, verify and report scientific, technical and statistical data pertaining to fishery resources and marine ecosystems in the Convention Area in conformity with the standards, rules and procedures established by the Commission.

2 Each member of the Commission shall report to the Commission on an annual basis indicating how it has implemented the conservation and management measures and compliance and enforcement procedures adopted by the Commission. In the case of coastal State Contracting Parties, the report shall include information regarding the conservation and management measures they have taken for straddling fishery resources occurring in waters under their jurisdiction adjacent to the Convention Area in accordance with Article 20 paragraph 4 and Article 4. Such reports shall be made publicly available.

3 Without prejudice to the primacy of the responsibility of the flag State, to the greatest extent possible, each member of the Commission shall take measures and cooperate to ensure compliance by its nationals, or fishing vessels owned, operated or controlled by its nationals, with the provisions of this Convention and any conservation and management measures adopted by the Commission, and immediately investigate any alleged violation of such provisions and measures. Members of the Commission shall provide reports on the progress of the investigation to the Commission and relevant members of the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed.

4 To the extent permitted by its national laws and regulations, each member of the Commission shall establish arrangements for making available to prosecuting authorities of other members of the Commission evidence related to alleged violations of the provisions of the Convention and any conservation and management measures adopted by the Commission, including information available on the beneficial ownership of vessels flying its flag.

5 Each member of the Commission shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights recognised in this Convention in a manner which would not constitute an abuse of right.

Article 25 FLAG STATE DUTIES

1 Each member of the Commission shall take all necessary measures to ensure that fishing vessels flying its flag:

- (a) comply with the provisions of this Convention and the conservation and management measures adopted by the Commission and that such vessels do not engage in any activity which undermines the effectiveness of such measures when operating in the Convention Area;
- (b) do not conduct unauthorised fishing within waters under national jurisdiction adjacent to the Convention Area;
- (c) carry and operate equipment sufficient to comply with vessel monitoring system standards and procedures adopted by the Commission; and
- (d) land or tranship fishery resources caught in the Convention Area in accordance with standards and procedures adopted by the Commission.

2 No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Convention Area unless it has been authorised to do so by the appropriate authority or authorities of that member of the Commission.

3 Each member of the Commission shall:

- (a) authorise the use of fishing vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention and in accordance with international law;

- (b) maintain a register of fishing vessels entitled to fly its flag and authorised to fish for fishery resources, and ensure that, for all such vessels, such information as may be specified by the Commission is entered in that register;
- (c) in accordance with measures adopted by the Commission, investigate immediately and report fully on actions taken in response to any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. Reporting shall include reports on the progress of the investigation to the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed;
- (d) ensure that penalties applicable for such violations are of an appropriate severity, taking into account relevant factors including the value of the catch, to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities; and
- (e) ensure in particular that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Convention or of any conservation and management measures adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the Convention Area until it has complied with all outstanding sanctions imposed by the member of the Commission in respect of the violation.

4 Each member of the Commission is encouraged to ensure that fishing vessels flying its flag operate in the Convention Area in accordance with applicable international obligations, and with regard to relevant recommendations and guidelines, regarding safety at sea for vessels and their crews.

5 Each member of the Commission shall ensure that fishing vessels flying its flag engaged in or intending to engage in research into fishery resources comply with any procedures established by the Commission for the conduct of scientific research in the Convention Area.

Article 26 PORT STATE DUTIES

1 A port State Contracting Party has the right and duty to take measures, in accordance with international law, to promote the

effectiveness of sub-regional, regional and global conservation and management measures. When taking such measures, a port State Contracting Party shall not discriminate in form or in fact against the fishing vessels of any State.

2 Each member of the Commission shall:

- (a) give effect to conservation and management measures adopted by the Commission in relation to the entry and use of its ports by fishing vessels that have engaged in fishing in the Convention Area including, *inter alia*, with respect to landing and transshipment of fishery resources, inspection of fishing vessels, documents, catch and gear on board, and use of port services; and
- (b) provide assistance to flag States, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Convention and with the conservation and management measures adopted by the Commission.

3 In the event that a member of the Commission considers that a fishing vessel making use of its ports has violated a provision of this Convention or a conservation and management measure adopted by the Commission, it shall notify the flag State concerned, the Commission and other relevant States and appropriate international organisations. The member of the Commission shall provide the flag State and, as appropriate the Commission with full documentation on the matter, including any record of inspection.

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

Article 27

MONITORING, COMPLIANCE AND ENFORCEMENT

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

- (a) the establishment and maintenance of a Commission record of vessels authorised to fish in the Convention Area, the marking of vessels and fishing gear, the recording of fishing activities, and the reporting of vessel movements and activities by a

satellite vessel monitoring system that shall be designed to ensure the integrity and security of near real time transmissions, including through the possibility of direct and simultaneous transmissions, to the Commission and flag State;

- (b) an inspection programme for Contracting Parties, both at sea and in port, including procedures for Contracting Parties to board and inspect each others' vessels in the Convention Area, and procedures for notification of inspection vessels and aircraft of Contracting Parties that may participate in the programme;
- (c) regulation and supervision of transshipment;
- (d) non discriminatory market-related measures, consistent with international law, to monitor transshipment, landings, and trade to prevent, deter and eliminate IUU fishing including, where appropriate, catch documentation schemes;
- (e) reporting on violations detected, progress and outcomes of investigations, and enforcement actions taken; and
- (f) addressing IUU fishing activities, including by identifying vessels engaging in IUU fishing activities, and by adopting appropriate measures to prevent, deter and eliminate IUU fishing, such as the development of an IUU vessels list, so that owners and operators of vessels engaging in such activities are deprived of the benefits accruing from those activities.

2 The Commission may adopt procedures that enable measures, including trade-related measures in relation to fishery resources, to be applied by members of the Commission to any state, member of the Commission, or entity whose fishing vessels engage in fishing activities that diminish the effectiveness of, or otherwise fail to comply with, the conservation and management measures adopted by the Commission. Such measures should include a range of possible responses so that account can be taken of the reason for and degree of non-compliance and should include, as appropriate, cooperative capacity-building initiatives. Any implementation of trade-related measures by a member of the Commission shall be consistent with that member's international obligations, including its obligations under the Agreement establishing the World Trade Organisation.

3 If, within three years of the entry into force of this Convention, the Commission has not adopted at sea inspection procedures as outlined in paragraph 1 (b), or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Convention to ensure compliance with the conservation and management measures adopted by the Commission, Articles 21 and 22 of the 1995 Agreement shall apply among Contracting

Parties as if those Articles were part of this Convention, and boarding and inspection of fishing vessels in the Area, as well as any subsequent enforcement action, shall be conducted in accordance with Articles 21 and 22 of the 1995 Agreement and such additional practical procedures as the Commission may decide are necessary for the implementation of those Articles.

Article 28 OBSERVER PROGRAMME

1 The Commission shall establish an observer programme, within three years of the entry into force of this Convention or such other period as the Commission may agree, to collect verified catch and effort data, other scientific data and additional information related to the fishing activity in the Convention Area, and its impacts on the marine environment. Information collected by the observer programme shall, as appropriate, also be used to support the functions of the Commission and its subsidiary bodies, including the Compliance and Technical Committee. The observer programme shall be coordinated by the Secretariat of the Commission, and shall be organised in a flexible manner which takes into account the nature of the fishery resources and other relevant factors. In this regard, the Commission may enter into contracts for the provision of the observer programme.

2 The observer programme shall consist of independent and impartial observers that are sourced from programmes or service providers accredited by the Commission. The programme shall be coordinated, to the maximum extent possible, with other regional, sub-regional and national observer programmes.

3 The Commission shall develop the observer programme taking into account advice from the Scientific Committee and Compliance and Technical Committee. The programme shall be operated in accordance with standards, rules and procedures developed by the Commission including, *inter alia*:

- (a) arrangements for the placing of observers by a member of the Commission on vessels flying the flag of another member of the Commission with the consent of that member;
- (b) levels of coverage appropriate for different fishery resources to monitor and verify catch, effort, catch composition and other details of fishing operations;
- (c) requirements for collection, validation and reporting of scientific data and information relevant to the implementation of the

provisions of this Convention and the conservation and management measures adopted by the Commission; and

- (d) requirements to ensure the safety and training of observers, for observer accommodation while on board the vessel, and to ensure observers have full access to and use of all relevant facilities and equipment on board the vessel in order to perform their duties effectively.

Article 29 ANNUAL REPORT OF THE COMMISSION

1 The Commission shall publish an annual report, which shall include details of decisions taken by the Commission to achieve the objective of this Convention. The report shall also provide information on actions taken by the Commission in response to any recommendations from the General Assembly of the United Nations or the FAO.

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

Article 30 REVIEWS

1 The Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this Convention and the consistency of such measures with the principles and approaches in Article 3. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years.

2 The Commission shall determine the terms of reference and methodology of such reviews which shall be carried out in accordance with criteria set by the Commission which shall be guided by best international practices and shall include contributions from the subsidiary bodies as appropriate and the participation of a person or persons of recognised competence who is independent of the Commission.

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

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

Article 31 COOPERATION WITH OTHER ORGANISATIONS

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

2 The Commission shall take account of the conservation and management measures or recommendations adopted by other regional fisheries management organisations and other relevant intergovernmental organisations that have competency in relation to the Convention Area, or in relation to areas adjacent to the Convention Area or in respect of particular living marine resources including non-target and associated or dependent species, and that have objectives that are consistent with, and supportive of, the objective of this Convention. It shall endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures or recommendations.

3 The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with such other organisations. In particular it shall seek to cooperate with other relevant organisations with the aim of reducing and eventually eliminating IUU fishing.

Article 32 NON-PARTIES

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

2 Taking account of Articles 116 to 119 of the 1982 Convention, the members of the Commission, individually or collectively, may draw the attention of any State or fishing entity which is a non-Contracting Party to

this Convention to any activity which in the opinion of the member or members of the Commission affects the implementation of the objective of this Convention.

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

4 Members of the Commission, individually or jointly, shall seek the cooperation of any non-Contracting Party that has been identified as a relevant port State or market State to ensure compliance with the objective of this Convention.

Article 33 RELATION TO OTHER AGREEMENTS

1 Nothing in this Convention shall prejudice the rights, jurisdiction and duties of Contracting Parties under relevant provisions of international law as reflected in the 1982 Convention or the 1995 Agreement.

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

Article 34 SETTLEMENT OF DISPUTES

1 Contracting Parties shall cooperate in order to prevent disputes and shall use their best endeavours to resolve any disputes by amicable means which may include, where a dispute is of a technical nature, referring the dispute to an ad hoc expert panel.

2 In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, *mutatis mutandis*, to any dispute between the Contracting Parties.

3 Paragraph 2 shall not affect the status of any Contracting Party in relation to the 1995 Agreement or the 1982 Convention.

Article 35
AMENDMENTS

1 The text of proposed amendments must be provided to the Executive Secretary at least 90 days in advance of a Commission meeting. The Executive Secretary shall promptly circulate a copy of this text to all members of the Commission.

2 Such proposals for amendment to this Convention shall be adopted by the Commission by a three-fourths majority of the Contracting Parties present and casting affirmative or negative votes. Adopted amendments shall be transmitted by the Depositary to all Contracting Parties without delay.

3 An amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of written notification of approval by three-fourths of all Contracting Parties unless any other Contracting Party notifies the Depositary that it objects to the amendment within ninety days of the date of transmittal specified in the notification by the Depositary of such receipt, in which case the amendment shall not take effect for any Contracting Party. Any Contracting Party which has objected to an amendment may at any time withdraw that objection. If all objections to an amendment are withdrawn, the amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of the last withdrawal.

4 Any State, regional economic integration organisation, or other entity referred to in Article 1 paragraph 2 (b) that becomes a Contracting Party after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the Convention as amended once that amendment has entered into force in accordance with paragraph 3.

5 The Depositary shall promptly notify all Contracting Parties of the receipt of notifications of approval of amendments, the receipt of notifications of objection or withdrawal of objections, and the entry into force of amendments.

Article 36
SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL

- 1 This Convention shall be open for signature by:
 - (a) States, the regional economic integration organisation and the other entities referred to in Article 1, paragraph 2 (b), that

participated in the International Consultations on the Establishment of the South Pacific Regional Fisheries Management Organisation; and

- (b) any other State or any other entity referred to in Article 1, paragraph 2 (b), that has jurisdiction over waters adjacent to the Convention Area;

and shall remain open for signature for 12 months from the first day of February 2010.

2 This Convention is subject to ratification, acceptance or approval by the signatories.

3 Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 37 ACCESSION

1 This Convention shall be open for accession, after its closure for signature, by any State, regional economic integration organisation or other entity referred to in Article 36 paragraph 1, and by any other State or any other entity referred to in Article 1 paragraph 2 (b) having an interest in fishery resources.

2 Instruments of accession shall be deposited with the Depositary.

Article 38 ENTRY INTO FORCE

1 This Convention shall enter into force 30 days after the date of receipt by the Depositary of the eighth instrument of ratification, accession, acceptance or approval, which shall include ratification, accession, acceptance or approval by:

- (a) at least three coastal States adjacent to the Convention Area, which must include representation from both the side of the Convention Area that is east of Meridian 120° West and the side of the Convention Area that is west of Meridian 120° West; and
- (b) at least three States that are not coastal States adjacent to the Convention Area and whose fishing vessels are fishing in the Convention Area or have fished in the Convention Area.

2 If within three years of its adoption, this Convention has not entered into force in accordance with paragraph 1, it shall enter into force six months after the deposit of the tenth instrument of ratification, accession, acceptance or approval, or in accordance with paragraph 1, whichever is the earlier.

3 For each signatory which ratifies, accepts or approves this Convention after its entry into force, this Convention shall enter into force for that signatory 30 days after the deposit of its instrument of ratification, acceptance or approval.

4 For each State or regional economic integration organisation which accedes to this Convention after its entry into force, this Convention shall enter into force for that State or regional economic integration organisation 30 days after the deposit of its instrument of accession.

5 For the purposes of this Article, "fishing" includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).

Article 39 THE DEPOSITARY

1 The Government of New Zealand shall be the Depositary of this Convention and any amendments thereto. The Depositary shall transmit certified copies of this Convention to all signatories and shall register this Convention with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.

2 The Depositary shall inform all signatories of and Contracting Parties to this Convention of signatures and of instruments of ratification, accession, acceptance or approval deposited under Article 36 or 37 and of the date of entry into force of the Convention and of any amendments thereto.

Article 40 PARTICIPATION BY TERRITORIES

1 The Commission and its subsidiary bodies shall be open to participation, with the appropriate authorisation of the Contracting Party having responsibility for its international affairs, to territories in the region that have an interest in fishery resources.

2 The nature and extent of participation by territories shall be provided for by the Contracting Parties in separate rules of procedure of the

Commission, taking into account international law, the distribution of competence on matters covered by this Convention and the evolution in the capacity of such territory to exercise rights and responsibilities under this Convention. These rules of procedure shall provide territories with the right to participate fully in the work of the Commission and its subsidiary bodies, except for the right to vote or block consensus on decisions, advice or recommendations.

3 Notwithstanding paragraph 2, all such territories shall be entitled to be present and to speak at the meetings of the Commission and its subsidiary bodies. In the performance of its functions, and in taking decisions, the Commission shall take into account the interests of all participants.

Article 41 WITHDRAWAL

1 A Contracting Party may, by written notification addressed to the Depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect 1 year after the date of receipt of the notification, unless the notification specifies a later date.

2 Withdrawal from this Convention by a Contracting Party shall not affect the financial obligations of such Contracting Party incurred prior to its withdrawal becoming effective.

3 Withdrawal from this Convention by a Contracting Party shall not in any way affect the duty of such Contracting Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 42 TERMINATION

This Convention shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below 4.

Article 43 RESERVATIONS

No reservations or exceptions may be made to this Convention.

Article 44
DECLARATIONS AND STATEMENTS

Article 43 does not preclude a State, regional economic integration organisation or entity referred to in Article 1 paragraph 2 (b), when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonisation of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State, regional economic integration organisation or entity.

Article 45
ANNEXES

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

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

DONE at Auckland the fourteenth day of November, two thousand and nine, in a single original.

OPENED FOR SIGNATURE at Wellington this first day of February, two thousand and ten.

Australia:

Belize:

Canada:

Republic of Chile:

People's Republic of China:

Republic of Colombia:

Cook Islands:

Republic of Cuba:

**Kingdom of Denmark in
respect of the Faroe Islands:**

Republic of Ecuador:

European Union:

Republic of the Fiji Islands:

French Republic:

Republic of Indonesia:

Japan:

Republic of Kiribati:

Republic of Korea:

Federation of Malaysia:

Republic of the Marshall Islands:

Federated States of Micronesia:

Republic of Nauru:

New Zealand:

Niue:

Republic of Palau:

Republic of Panama:

Independent State of Papua New Guinea:

Republic of Peru:

Russian Federation:

Independent State of Samoa:

Solomon Islands:

Kingdom of Tonga:

Tuvalu:

Ukraine:

United Kingdom of Great Britain and
Northern Ireland in respect of Pitcairn,
Henderson, Ducie and Oeno Islands:

United States of America:

Republic of Vanuatu:

Bolivarian Republic of Venezuela:

Annex I

PARTS OF THE CONVENTION AREA FOR WHICH THE EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES HAVE RESPONSIBILITIES

1 The Eastern Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Convention Area that lies east of Meridian 120° West.

2 The Western Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Convention Area that lies west of Meridian 120° West.

Annex II

REVIEW PANEL

Establishment

1 A Review Panel to be established in accordance with Article 17 paragraph 5 shall be constituted as follows:

- (a) It shall consist of three members appointed from the list of experts in the field of fisheries drawn up and maintained by the FAO pursuant to Annex VIII, Article 2 of the 1982 Convention or a similar list maintained by the Executive Secretary. The list maintained by the Executive Secretary shall be made up from experts whose competence in the legal, scientific or technical aspects of fisheries covered by this Convention is established and generally recognised and who enjoy the highest reputation for fairness and integrity. Each member of the Commission shall be entitled to nominate up to five experts and shall provide information on relevant qualifications and experience of each of its nominees.
- (b) The Chairperson of the Commission and the member of the Commission that has presented objection to the decision shall each appoint one member. The name of the member appointed by the objecting member of the Commission shall be included in the notification of the objection to the Executive Secretary pursuant to Article 17 paragraph 2 (a). The name of the member appointed by the Chairperson of the Commission shall be notified to the objecting member of the Commission within 10 days of the expiry of the objection period.
- (c) The third member shall be appointed within 20 days of the expiry of the objection period through agreement between the objecting member of the Commission and the Chairperson of the Commission and shall not be a national of the objecting member of the Commission. If there is no agreement within this time period on the appointment of the third member, the appointment shall be made by the Secretary General of the Permanent Court of Arbitration, unless it is agreed that the appointment be made by another person or third State.
- (d) The Review Panel is considered to be established on the date that the third member is appointed, and this third member shall chair the Review Panel.

2 If more than one member of the Commission presents an objection to the decision on the same grounds, or where there is agreement pursuant to Article 17 paragraph 5 (d) that objections to the decision made on different grounds may be dealt with by the same Review Panel, the Review Panel shall consist of 5 members from the lists referred to in paragraph 1 (a) and shall be constituted as follows:

- (a) One member shall be appointed, in accordance with paragraph 1 (b) by the member of the Commission that presented the first objection, two members shall be appointed by the Chairperson of the Commission within 10 days of the expiry of the objection period, one member shall be appointed by agreement between the subsequent objecting members of the Commission within 15 days of the expiry of the objection period and one member shall be appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission within 20 days of the expiry of the objection period. If within the latter two time periods as appropriate, agreement cannot be reached on either of the last two appointments, the appointment or appointments on which agreement has not been reached shall be made by the Secretary General of the Permanent Court of Arbitration unless there is agreement that the appointment or appointments be made by another person or third State.
- (b) The Review Panel is considered to be established on the date that the final member is appointed. The Review Panel shall be chaired by the member appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission in accordance with subparagraph (a).

3 Any vacancy on a Review Panel shall be filled in the manner described for the initial appointment.

Functioning

4 The Review Panel shall determine its own rules of procedure.

5 A hearing shall be convened at a place and on a date to be determined by the Review Panel within 30 days following its establishment.

6 Any member of the Commission may submit a memorandum to the Review Panel concerning the objection under review and the Panel shall allow any such member of the Commission full opportunity to be heard.

7 Unless the Review Panel decides otherwise because of the particular circumstances of the case, the expenses of the Review Panel, including the remuneration of its members, shall be borne as follows:

- (a) 70 per cent shall be borne by the objecting member of the Commission, or if there is more than one objecting member of the Commission, divided equally amongst them; and
- (b) 30 per cent shall be borne by the Commission from its annual budget.

8 The findings and recommendations of the Review Panel shall be adopted by a majority of its members. Any member of the Panel may attach a separate or dissenting opinion. Any decisions on the procedure of the Review Panel shall also be taken by a majority of its members.

9 The Review Panel shall, within 45 days of its establishment, transmit its findings and recommendations to the Executive Secretary in accordance with Article 17 paragraph 5.

Findings and Recommendations

10 The findings and recommendations of the Review Panel shall be dealt with as follows:

Findings of Discrimination

- (a) If the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures have equivalent effect to the decision to which objection has been presented, the alternative measures shall be deemed to be equivalent to the decision and to be binding on the relevant member or members of the Commission in substitution for the decision.
- (b) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures are equivalent in effect to the decision to which objection has been presented, subject to specific modifications, the Review Panel will recommend such modifications. On receipt of the findings and recommendations of the Review Panel the objecting member or members of the Commission shall, within 60 days, modify the relevant alternative measures as recommended by

the Review Panel or institute dispute settlement proceedings under this Convention. The alternative measures shall be deemed to be equivalent to the decision to which an objection has been presented when they are modified as recommended by the Review Panel. Such alternative measures shall then be binding on the relevant member or members of the Commission in the modified form in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor the modified alternative measures shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (c) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented unjustifiably discriminates in form or in fact against the objecting member or members of the Commission but the alternative measures do not have equivalent effect to the decision to which objection has been presented the objecting member or members of the Commission shall, within 60 days, adopt measures recommended by the Review Panel as equivalent in effect to the decision to which objection has been presented or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission adopt the measures recommended by the Review Panel these measures shall be deemed to be binding on the objecting member or members of the Commission in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor any measures recommended by the Review Panel shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.
- (d) Where the Review Panel makes findings and recommendations under subparagraphs (b) or (c) the objecting member or members of the Commission may within 30 days from the date of the transmittal of the notification of those findings and recommendations request an extraordinary meeting of the Commission. The Extraordinary Meeting shall be convened by the Chairperson within 45 days of the receipt of any such request.
- (e) If the Extraordinary Meeting convened under subparagraph (d) confirms or modifies the recommendations of the Review Panel, the 60 day period under subparagraphs (b) or (c) as

appropriate, for the implementation of those findings and recommendations in original or modified form or the institution of dispute settlement proceedings, shall run from the date of the transmittal of the decision of the Extraordinary Meeting. If the Extraordinary Meeting of the Commission decides not to confirm or modify the recommendations of the Review Panel but to revoke the decision to which objection was presented and replace it with a new decision or a modified version of the original decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.

Findings of Inconsistency

- (f) If the Review Panel finds that the decision to which objection has been presented is inconsistent with this Convention, or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement, an Extraordinary Meeting of the Commission shall be convened by the Chairperson within 45 days of the notification of the Review Panel's findings and recommendations to reconsider the decision in the light of those findings and recommendations.
- (g) If the Extraordinary Meeting of the Commission revokes the decision to which objection has been presented and replaces it with a new decision, or a modified version of the previous decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.
- (h) If the Extraordinary Meeting of the Commission confirms its original decision, the objecting member or members of the Commission shall, within 45 days, implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention, the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

Findings of Non-justification of Objection

- (i) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant

international law as reflected in the 1982 Convention or the 1995 Agreement, the objecting member or members of the Commission shall, subject to subparagraph (j), within 45 days implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (j) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement but that the alternative measures are equivalent in effect to the decision and should be accepted as such by the Commission, the alternative measures shall be binding on the objecting member or members of the Commission in substitution for the decision pending confirmation of their acceptance by the Commission at its next meeting.

Annex III

PROCEDURES FOR THE ESTABLISHMENT AND IMPLEMENTATION OF A TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT FOR A STRADDLING FISHERY RESOURCE WHEN APPLIED THROUGHOUT ITS RANGE

1 In accordance with Articles 23 and 24, coastal State Contracting Parties and members of the Commission whose vessels fish for the straddling fishery resource in areas under national jurisdiction or on the high seas in the adjacent Convention Area shall provide all relevant scientific, technical and statistical data with respect to such fishery resources to the Commission for consideration by the Scientific Committee and, as appropriate, the Compliance and Technical Committee.

2 In accordance with Article 10, the Scientific Committee shall assess the status of the straddling fishery resource throughout its range and provide advice to the Commission and the relevant Sub-regional Management Committee on an appropriate total allowable catch or total allowable fishing effort for the resource throughout its range. Such advice should include where possible estimates of the extent to which the establishment of a total allowable catch or a total allowable fishing effort at different levels would achieve the objective or objectives of any management strategy or plan adopted by the Commission.

3 In accordance with Article 12, and on the basis of the advice of the Scientific Committee and any relevant advice of the Compliance and Technical Committee, the relevant Sub-regional Management Committee shall make recommendations to the Commission on a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and appropriate measures to ensure the total allowable catch or total allowable fishing effort is not exceeded.

4 In accordance with Articles 16 and 20, the Commission, on the basis of the recommendations and advice from the Scientific Committee and the relevant Sub-regional Management Committee and any relevant advice of the Compliance and Technical Committee, shall establish a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded.

5 In relation to the conservation and management of *Trachurus murphyi* (jack mackerel), the Commission shall, in accordance with Article 20, and as appropriate, give primary consideration to establishing a total allowable catch, without prejudice to any other conservation and

management measures which it considers appropriate to adopt to ensure the conservation and sustainable use of this fishery resource.

Annex IV 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 may, by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant to it. Such commitment shall become effective 30 days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Depositary. The withdrawal shall become effective 1 year after the date of its receipt, unless the notification specifies a later date.

2 Any fishing entity referred to in paragraph 1 above may by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of the Convention as it may be amended pursuant to Article 35(3). This commitment shall be effective from the dates referred to in Article 35(3) or on the date of receipt of the written communication referred to in this paragraph, whichever is later.

3 A fishing entity which has expressed its firm commitment to abide by the terms of this Convention and comply with conservation and management measures adopted pursuant to it 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 which has expressed its commitment to be bound by the 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 the 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.

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264201 號

茲修正廢棄物清理法第七十一條及第七十七條條文，公布之。

總 統 馬英九
行政院院長 陳 冲

廢棄物清理法修正第七十一條及第七十七條條文

中華民國 101 年 11 月 28 日公布

第七十一條 不依規定清除、處理之廢棄物，直轄市、縣（市）主管機關或執行機關得命事業、受託清除處理廢棄物者、仲介非法清除處理廢棄物者、容許或因重大過失致廢棄物遭非法棄置於其土地之土地所有人、管理人或使用人，限期清除處理。屆期不為清除處理時，直轄市、縣（市）主管機關或執行機關得代為清除、處理，並向其求償清理、改善及衍生之必要費用。屆期未清償者，移送強制執行；直轄市、縣（市）主管機關或執行機關得免提供擔保向行政法院聲請假扣押、假處分。

直轄市、縣（市）主管機關或執行機關依前項規定代為清除、處理廢棄物時，得不經土地所有人、管理人或使用人同意，強制進入公私場所進行有關採樣、檢測、清除或處理等相關措施。

第一項必要費用之求償權，優於一切債權及抵押權。

直轄市、縣（市）主管機關或執行機關代為清除、處理第一項廢棄物時，得委託適當公民營廢棄物清除處理機構清除、處理之。

第七十七條 本法自公布日施行。

本法中華民國九十五年五月五日修正之條文，自九十五年七月一日施行。

本法中華民國一百零一年十一月十三日修正之條文，自一百零一年九月六日施行。

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264211 號

茲修正就業服務法第五條條文，公布之。

總 統 馬英九
行政院院長 陳 冲

就業服務法修正第五條條文

中華民國 101 年 11 月 28 日公布

第 五 條 為保障國民就業機會平等，雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙或以往工會會員身分為由，予以歧視；其他法律有明文規定者，從其規定。

雇主招募或僱用員工，不得有下列情事：

- 一、為不實之廣告或揭示。
- 二、違反求職人或員工之意思，留置其國民身分證、工作憑證或其他證明文件，或要求提供非屬就業所需之隱私資料。
- 三、扣留求職人或員工財物或收取保證金。
- 四、指派求職人或員工從事違背公共秩序或善良風俗

之工作。

五、辦理聘僱外國人之申請許可、招募、引進或管理事項，提供不實資料或健康檢查檢體。

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264221 號

茲刪除漁會法第五十條之五條文；並修正第五條、第十一條、第十五條之一、第二十三條之一、第二十六條之一、第二十七條及第三十五條條文，公布之。

總 統 馬英九
行政院院長 陳 冲

漁會法刪除第五十條之五條文；並修正第五條、第十一條、第十五條之一、第二十三條之一、第二十六條之一、第二十七條及第三十五條條文

中華民國 101 年 11 月 28 日公布

第 五 條 漁會辦理前條第一項第九款所定任務，依農業金融法之規定。

漁會辦理前條第一項第十六款所定接受委託辦理及協助有關漁民保險事業，得設立保險部。

各級漁會為辦理前條第一項事業而為重大投資事項者，得由二個以上漁會共同向中央主管機關申請核准後，依公司法規定，共同投資股份有限公司；其出資或投資審核辦法，由中央主管機關另定之。

第 十 一 條 漁區內具有會員資格之漁民滿一百人以上時，得發起組織區漁會。

下級漁會應加入上級漁會為會員，並應受上級漁會之輔導；其辦法由中央主管機關定之。

第十五條之一 凡中華民國國民，年滿二十歲，設籍漁會組織區域內，不合前條規定之從事漁業相關事業者，得加入漁會為個人贊助會員。

凡依法登記之漁業相關事業得加入當地漁會為團體贊助會員。個人贊助會員及團體贊助會員，除得當選監事外，無選舉權及其他被選舉權。但其他應享權利及應盡義務與會員同。

第二十三條之一 漁會選任人員應於任期屆滿三十日前或主管機關指定之日期完成改選。

漁會選任人員之當選人應於規定之日就職。重行選舉或補選之當選人或因故未能於規定期限內完成選舉就職者，其任期仍應自規定之日起算。

本法中華民國一百零一年十一月十三日修正之條文施行後，金門區漁會一百零一年十月第十八屆選任人員之任期至一百零六年三月止。高雄區漁會一百零二年八月第十屆選任人員之任期至一百零六年三月止。

第二十六條之一 凡中華民國國民，合於下列規定者，得登記為漁會總幹事候選人：

一、全國漁會總幹事應具有下列資格之一：

(一)大學、獨立學院以上學校畢業或高考及格，並曾任漁業及漁業有關機關、學校、金融機構或漁民團體相當薦任職務三年以上。

(二)專科以上學校畢業，並曾任漁業及漁業有關機

關、學校、金融機構或漁民團體相當薦任職職務五年以上。

(三)高中、高職畢業或普考及格，並曾任漁業及漁業有關機關、學校、金融機構或漁民團體相當薦任職職務七年以上。

二、區漁會總幹事應具下列資格之一：

(一)大學、獨立學院以上學校畢業或高考及格，並曾任漁業及漁業有關機關、學校、金融機構或漁民團體相當委任職職務二年以上。

(二)專科以上學校畢業，並曾任漁業及漁業有關機關、學校、金融機構或漁民團體相當委任職職務四年以上。

(三)高中、高職畢業或普考及格，並曾任漁業及漁業有關機關、學校、金融機構或漁民團體相當委任職職務六年以上。

三、各級漁會新進總幹事之年齡，不得超過五十五歲。

現任總幹事不合前項規定資格者，得不受前項限制。但於下屆任期不足一年即將屆齡退休者，不得登記為總幹事候聘人。

總幹事候聘人經中央主管機關評定合格後，經發現其於聘任前有未合第一項規定情形之一者，中央主管機關應撤銷其評定；已受聘者，亦同。

第二十七條 漁會總幹事以外之聘任職員，由總幹事就漁會統一考試合格人員中聘任並指揮、監督。

前項聘任職員，應由中央主管機關督導全國漁會統一

考訓之。

第三十五條 漁會會員（代表）大會，分定期會議與臨時會議二種，由理事長召集之。

定期會議，各級漁會每年應召集一次。臨時會議，經會員（代表）三分之一以上請求，或理事會認為必要時召集之。

前項請求召開之臨時會議，如理事長不於十日內召開時，原請求人得申請主管機關核准，以命令召集之。

區漁會如因會員眾多，致召集會員大會確有困難時，得劃分選區由會員選任代表，改開代表大會，行使會員大會職權。

第五十條之五 （刪除）

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264231 號

茲增訂漁業法第十一條之一及第六十四條之一條文；並修正第六十四條條文，公布之。

總 統 馬英九
行政院院長 陳 冲

漁業法增訂第十一條之一及第六十四條之一條文；並修正第六十四條條文

中華民國 101 年 11 月 28 日公布

第十一條之一 漁業人經撤銷漁業證照或漁業經營核准之漁船，不得出港。但經向主管機關重新申請，並取得漁業證照者，不在此限。

漁業人經處分收回漁業證照、限制或停止漁業經營之漁船，於處分期間，不得出港。

漁船於中央主管機關依第十條第一項或第十一條第一項規定處分前已出港，或違反前二項規定出港者，中央主管機關應命其限期返港。

漁船違反第一項及第二項規定出港者，中央主管機關得委託海岸巡防機關，採取適當措施制止其出港或命其立即返港；抗拒者，得使用強制力為之。

第六十四條 有下列情事之一者，處新臺幣三萬元以上三十萬元以下罰鍰：

- 一、違反第六條規定經營漁業者。
- 二、違反主管機關依第二十九條第一項所為之處分者。
- 三、漁業證照逾期未經核准延展，繼續經營漁業者。

第六十四條之一 漁船違反第十一條之一第一項或第二項規定而出港者，處漁業人或所有人新臺幣六萬元以上三十萬元以下罰鍰。

漁船未依第十一條之一第三項所定期限返港者，處漁業人或所有人新臺幣六萬元以上三十萬元以下罰鍰，並得按日連續處罰。

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264241 號

茲修正農產品市場交易法第十三條條文，公布之。

總 統 馬英九
行政院院長 陳 冲

農產品市場交易法修正第十三條條文

中華民國 101 年 11 月 28 日公布

第十三條 農產品批發市場經營主體，以合於下列規定之一者為限：

- 一、農民團體。
- 二、農民團體共同出資組織之法人。
- 三、政府機關或鄉（鎮、市）公所及農民團體共同出資組織之法人。
- 四、農民及農產品販運商共同出資組織之法人。
- 五、政府機關或鄉（鎮、市）公所出資組織之法人。
- 六、政府機關或鄉（鎮、市）公所、農民團體或農民，及農產品販運商共同出資組織之法人。

農產品批發市場，經營主體均不得以營利為目的；其組織除前項第一款外，準用公司法股份有限公司之規定。但第二款、第三款、第五款、第六款之法人，發起人人數及資格不受公司法第一百二十八條之限制。

農產品批發市場之經營，以合於第一項第一款、第二款規定者為優先；合於第一項第四款規定者，不得享有本法第十二條、第十五條、第十七條所定之補助、土地取得及稅捐減徵等優待。

總統令

中華民國 101 年 11 月 28 日
華總一義字第 10100264251 號

茲修正海關進口稅則部分稅則，公布之。

總 統 馬英九
行政院院長 陳 冲
財政部部長 張盛和

註：附海關進口稅則修正部分稅則乙本。

總統令 中華民國 101 年 11 月 22 日

任命郝鳳鳴為行政院勞工委員會副主任委員。

總 統 馬英九
行政院院長 陳 冲

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**總統活動紀要**  
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記事期間：

101 年 11 月 16 日至 101 年 11 月 22 日

11 月 16 日（星期五）

- 接見「中華民國全國商業總會」全體理監事一行
- 接見101年(回曆1433年)我國回教朝覲團一行
- 接見我國參加「2012年國際暨亞洲數理學科奧林匹亞競賽」代表團成員一行
- 接見我國常駐世界貿易組織代表團李婉如秘書暨夫婿

11 月 17 日（星期六）

- 蒞臨「第2屆21世紀世界華文文學高峰會議」開幕式致詞（臺中市西屯區東海大學）

11 月 18 日（星期日）

- 蒞臨國防醫學院南區校友會慶祝母校111週年校慶暨會員大

會致詞並頒獎（高雄市漢來飯店）

11 月 19 日（星期一）

- 接見澳大利亞聯邦國會眾議員傑金斯（Harry Jenkins）等一行

11 月 20 日（星期二）

- 接見「美國聯邦眾議院軍事委員會監督暨調查小組」主席魏特曼（Rob Wittman）等一行
- 接見美國麻省理工學院（MIT）新任校長拉斐爾·萊夫（L. Rafael Reif）伉儷一行

11 月 21 日（星期三）

- 召開記者會說明我國年金制度改革的必要性、改革方式及方向（總統府）

11 月 22 日（星期四）

- 蒞臨法務部「2012年臺灣廉政治理研討會」開幕式致詞（臺北市福華國際文教會館）
- 接見101年度參與監所教化及保護工作有功人士與團體代表一行

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## 副總統活動紀要

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記事期間：

101 年 11 月 16 日至 101 年 11 月 22 日

11 月 16 日（星期五）

- 蒞臨第45屆「自來水節」慶祝大會暨第17屆第3次會員代表大

會致詞（臺中市北區）

- 蒞臨第20屆「世界女記者與作家協會」（AMMPE）世界年會開幕典禮致詞（臺中市政府大會堂）
- 參訪「私立臺中惠明盲校」（臺中市大雅區）

11月17日（星期六）

- 蒞臨「2012臺灣專案管理國際論壇」致詞並頒獎（臺灣科技大學）

11月18日（星期日）

- 蒞臨「國際青年商會2012臺北世界大會」開幕典禮致詞（臺北小巨蛋）

11月19日（星期一）

- 接見「第21屆中華民國企業環保獎獲獎事業暨101年模範環境保護專責人員」一行

11月20日（星期二）

- 蒞臨「第3屆全球膠帶論壇與全球膠帶測試會議暨膠帶公會產業技術研討會」開幕典禮致詞（臺北國際會議中心）
- 蒞臨「國際青年商會2012世界年會國際民代論壇」致詞（臺北市議會）

11月21日（星期三）

- 蒞臨「銅鑼科學園區聯絡道暨國道一號銅鑼交流道」通車典禮致詞並與行政院國家科學委員會副主任委員孫以瀚等人共同為通車典禮剪綵啟用（苗栗縣銅鑼科學園區）

11月22日（星期四）

- 接見第3屆「臺日青年菁英高峰會」與會成員一行

國史館公告

國史館 函

發文日期：中華民國 101 年 11 月 20 日

發文字號：國修字第 1010004396 號

主 旨：檢附國史館國史研究獎勵出版受理申請公告（含申請表、切結書、提要表，如附件），敬請刊載於 鈞府公報。

說 明：國史館國史研究獎勵出版擬於本（101）年 12 月 1 日起開始受理申請，依「行政程序法」第 160 條第 2 項規定，應登載於政府公報。

館 長 呂芳上

國史館國史研究獎勵出版受理申請公告

申請資格

- 1.取得教育部認可之國內外大學院校博、碩士學位論文。
- 2.申請出版之學位論文以未曾出版為限。
- 3.申請之論文須與中華民國史及臺灣史相關。
- 4.每人每年以申請一冊為限。

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每年 12 月 1 日於本館網站公告，接受申請，至翌年 2 月底截止，以郵戳為憑，7 月 30 日於本館網站公布錄取名單。

申請辦法

申請人需檢具下列資料：

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請將上列資料寄至 10048 臺北市中正區長沙街 1 段 2 號「國史館國史研究獎勵出版審查委員會」，聯絡人：周美華（02）23161094；論文及提要表電子檔請寄至 history@drnh.gov.tw。

獎勵名額

每年錄取至多十名。

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學歷	校名		系(所)別		畢業年月
大學					
碩士					
博士					
經歷	服務機關名稱	地點	起訖年月	職稱	
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附件三

國史館國史研究獎勵出版申請論文提要表

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