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CONVENTION CONCERNING MIGRATORY FISH STOCK IN THE PACIFIC OCEAN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF THE HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN, WITH ANNEXES (THE "WCPF CONVENTION"), WHICH WAS ADOPTED AT HONOLULU ON SEPTEMBER 5, 2000, BY THE MULTILATERAL HIGH LEVEL CONFERENCE ON THE HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN

MAY 16, 2005.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 16, 2005.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (the "WCPF Convention"), which was adopted at Honolulu on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The United States signed the Convention on that date. I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the WCPF Convention.

The WCPF Convention sets forth legal obligations and establishes cooperative mechanisms that are needed in order to ensure the long-term conservation and sustainable use of highly migratory fish stocks (such as tuna, swordfish, and marlin) that range across extensive areas of the high seas as well as through waters under the fisheries jurisdiction of numerous coastal States. These constitute resources of worldwide importance, with the fisheries for tuna in the Western and Central Pacific being the largest and most valuable in the world. Implementation of the WCPF Convention will offer the opportunity to conserve and manage these resources responsibly before they become subject to the pressures of overfishing and over-capacity that are so evident elsewhere in the world's oceans.

The WCPF Convention builds upon the 1982 United Nations Convention on the Law of the Sea and the 1995 United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The WCPF Convention gives effect to the provisions of these two instruments, which recognize cooperation to conserve highly migratory fish stocks as essential, and require those with direct interests in them—coastal States with authority to manage fishing in waters under their jurisdiction and nations whose vessels fish for these stocks—to engage in such cooperation through regional fishery management organizations.

The WCPF Convention balances in an equitable fashion the interests of coastal States, notably the island States that comprise the Forum Fisheries Agency (FFA), in protecting important fishery resources off their shores, and the interests of distant water fishing States, notably Asian fishing nations and entities (Japan, Republic of Korea, China, and Taiwan), whose fishing vessels range far from their own shores.

The United States, which played an instrumental role in achieving this balance, has direct and important interests in the WCPF Convention and its early and effective implementation. The United States is both a major distant water fishing nation (with the fourth-largest catch in the region) and an important coastal State with significant Exclusive Economic Zone waters in the region (including the waters around Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

United States fishing concerns, including the U.S. tuna industry, U.S. conservation organizations, and U.S. consumers, as well as those residents of Hawaii and the U.S. Flag Pacific island areas of Guam, American Samoa, and the Northern Mariana Islands, all have a crucial stake in the health of the oceans and their resources as promoted by the WCPF Convention.

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

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
January 10, 2005.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes ("the WCPF Convention"). The Convention was adopted at Honolulu on September 5, 2000, and was signed on behalf of the United States on that date. I recommend that the WCPF Convention be transmitted to the Senate for its advice and consent to ratification.

The WCPF Convention has as its objective the long-term conservation and sustainable use of highly migratory fish stocks of the Western and Central Pacific Ocean. Highly migratory fish stocks are those that migrate across extensive areas of the high seas as well as through the territorial seas and exclusive economic zones (EEZs) of numerous coastal States. Examples include species of tuna, swordfish, marlin, and related highly migratory species. The fisheries for tuna in the Western and Central Pacific are the largest and most valuable in the world.

The WCPF Convention builds upon provisions of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention) and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement).

The LOS Convention recognizes that effective conservation and management of highly migratory fish stocks requires cooperation among those with a direct interest in them: coastal States with the authority to manage fishing in their EEZs, as well as those nations whose vessels fish for these stocks within EEZs or on the high seas. It obligates such States in the regions where fishing for highly migratory species takes place to cooperate directly or through appropriate international organizations to ensure conservation and promote the sustainable utilization of such species throughout their ranges, both within and beyond the EEZ. It calls for cooperation to establish international organizations in regions where no appropriate body exists.

The UN Fish Stocks Agreement elaborates and strengthens the provisions of the LOS Convention regarding highly migratory species. Among other things, it contains a requirement that the coastal States and States whose vessels fish for highly migratory species

in a region where no regional fishery management organization or arrangement exists, establish such an organization or arrangement. The Western and Central Pacific Ocean is the last major marine area with extensive fishing for highly migratory species that lacks such a regional organization. The WCPF Convention is designed to fill this gap. A number of its provisions are drawn directly from the UN Fish Stocks Agreement.

Discussions leading to the development of the WCPF Convention began in December 1994, at the Multilateral High Level Conference on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (MHLC) in Honiara, Solomon Islands. The Conference was convened on the initiative of the Pacific Forum Fisheries Agency (FFA)—which consists of the island States of the Western and Central Pacific. In addition to FFA members, the principal distant water fishing States—those whose vessels fish for tuna on the high seas or within the EEZs of the island States—were invited to attend. FFA members, many of whom view the potential catch of tuna within their EEZs as an important contributor to their economies, saw the Conference as an opportunity to explore means of promoting sound management of the tuna fisheries in light of the entry into force of the LOS Convention (November 1994). However, they were initially reluctant to commit themselves to the negotiation of a binding regional agreement.

This first session of the MHLC led to technical consultations on the requirements for effective management of the region's tuna resources. These, combined with the adoption of the UN Fish Stocks Agreement in 1995, led to growing recognition by both FFA members and distant water fishing nations alike of the need for a regional agreement as foreseen in the UN Fish Stocks Agreement. As a result, a second session of the MHLC was convened in June 1997 at Majuro, Marshall Islands. The participants adopted a declaration (the Majuro Declaration) that included a political commitment to negotiate a regional agreement for the highly migratory fish stocks in the Western and Central Pacific Ocean in accordance with the LOS Convention and the UN Fish Stocks Agreement, and to do so within three years.

Detailed negotiations followed in five additional sessions of the MHLC:

—Third Session—Tokyo, June 1998
—Fourth Session—Honolulu, February 1999
—Fifth Session—Honolulu, September 1999
—Sixth Session—Honolulu, April 2000
—Seventh session—Honolulu, August–September 2000

Participants in the negotiations included the FFA members—Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu—as well as Canada (beginning at the Fourth Session), China, France, Indonesia (beginning at the Third Session), Japan, Philippines, Republic of Korea, Chinese Taipei, the United States and the United Kingdom on behalf of Pitcairn, Henderson, the Ducie and Oeno Islands (beginning at the Sixth Session). The French territories of French Polynesia, New Caledonia

and Wallis and Futuna also participated, but without decision-making competence.

The participants faced a number of difficult and complex issues in translating the general international legal obligations to conserve and cooperate in the conservation of highly migratory fish stocks into a practical and effective management regime. These ranged from the nature and decisionmaking procedures of the regime's institutions to effective mechanisms to ensure compliance with the provisions of the WCPF Convention and measures adopted pursuant to it. They also faced potentially intractable political issues relating to how Taiwan—with the second largest fishing fleet in the region—and non-self governing territories, such as French Polynesia and New Caledonia, would participate in the Convention.

Solutions to these issues required finding an equitable balance between coastal States, most particularly FFA members wary of any limitation of their sovereign rights in their EEZs, on the one hand, and the distant water fishing States, most particularly Asian fishing nations and entities (Japan, the Republic of Korea, China and Taiwan), on the other, which sought to avoid what they perceived as onerous burdens on their industries and concerns about being out-voted by the more numerous coastal States.

The United States occupied the middle ground in the negotiation as both a major distant water fishing nation (with the fourth largest catch in the region) and a coastal State with the largest EEZ in the Convention Area (including waters around Hawaii, American Samoa, Guam and the Northern Mariana Islands). Moreover, the United States enjoys a close relationship on fisheries matters with the FFA members collectively. This relationship is reflected in the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, as amended, which establishes regional licensing and access arrangements for U.S. tuna vessels in the Western and Central Pacific. It includes a number of innovative conservation and compliance features that influenced the content of the WCPF Convention.

The position occupied by the United States in the negotiations afforded the U.S. delegation opportunities and incentives to play an active role in securing an appropriate balance between coastal and distant water interests in the WCPF Convention. Additional key objectives for the United States included the creation of a level playing field—ensuring that all significant fishing fleets in the region are bound by uniform and effective conservation obligations—and ensuring as far as possible that the highly migratory stocks of the region are managed throughout their range.

The final session of the MHLC on September 5, 2000, adopted the WCPF Convention, incorporating what most participants viewed as fair and workable provisions on the key issues, along with a resolution (Resolution 1) convening a Preparatory Conference to prepare for the establishment of the Commission provided for in the WCPF Convention. Due to objections by Japan, supported by the Republic of Korea, the WCPF Convention could not be adopted by consensus and was put to a vote. It was adopted

by a vote of 19 in favor and two opposed (Japan and the Republic of Korea), with three abstentions (China, France and Tonga).

The Preparatory Conference provided for in Resolution 1 has held seven sessions undertaking important work in preparing for the entry into force of the WCPF Convention. Equally important, it has provided a forum for addressing the concerns expressed by those who were unable to support adoption of the WCPF Convention in September 2000, in particular Japan and the Republic of Korea. The Republic of Korea attended the Preparatory Conference from the outset and Japan, after initially declining to attend, joined the process at its third session in November 2002. At the fifth session in 2003, Japan announced its intention to initiate the process of seeking parliamentary approval for accession to the WCPF Convention. Most recently, at the seventh and final session in December 2004, China, Taiwan (Chinese Taipei), and the Republic of Korea participated as Parties to the WCPF Convention, and Japan announced that it expects to become a Party in 2005.

As a result of the work of the Preparatory Conference, the consensus that eluded the participants on adoption of the Convention now appears to have been achieved, with almost all of those who took part in the MHLC negotiations now Party to the WCPF Convention and committed to its success.

The Convention entered into force on June 19, 2004, six months after New Zealand deposited the thirteenth instrument of ratification. To date, sixteen States have ratified or acceded to the Convention. In addition, in November 2004 Taiwan (Chinese Taipei) completed its domestic requirements to become Party to the Convention as a "fishing entity" and, in accordance with Article 9 of the WCPF Convention, became a member of the Commission. This brings the number of States and fishing entities Party to the WCPF Convention to seventeen. The inaugural meeting of the Commission took place in December 2004, and the first annual meeting is scheduled for December 2005. As a result, I believe that it is important for the United States to take the steps necessary to join the new Commission at the earliest possible time.

The WCPF Convention consists of 43 articles and four Annexes. The following describes the salient features of the Convention.

Part I—General Provisions (Articles 1–4)

Article 1 of the WCPF Convention defines a number of key terms, including "highly migratory fish stocks", "fishing", "fishing vessel", "transshipment" and "regional economic integration organization."

"Highly migratory fish stocks" means all fish stocks of the species listed in Annex I of the LOS Convention occurring in the WCPF Convention Area and such other fish species as the Commission may determine. Annex I of the LOS Convention includes certain species that are not fish, such as cetaceans. Because the definition of "highly migratory fish stocks" clearly includes only fish stocks among those species, the WCPF Convention would not apply directly to the conservation of whales and other non-fish species.

"Fishing" means:

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in locating, catching, taking or harvesting of fish for any purpose;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transshipment;

(vi) use of any other vessel, vehicle, aircraft or hovercraft for any activity described in subparagraphs (i) to (iv) except for emergencies involving the health and safety of the crew or the safety of a vessel.

"Fishing Vessel" means any vessel used or intended to be used for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations. "Transshipment" means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port. "Regional economic integration organization" refers to a regional economic organization to which its member States have transferred competence over matters covered by the WCPF Convention, including authority to make decisions binding on its member States in respect of those matters. At present, the term refers only to the European Union.

Article 2 sets forth the objective of the WCPF Convention to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the Western and Central Pacific Ocean in accordance with the LOS Convention and the UN Fish Stocks Agreement.

Article 3 deals with the area of application of the WCPF Convention. The area of competence of the WCPF Commission includes all waters of the Pacific Ocean north and west of lines delineating the southern and eastern limits (Paragraph 1). Paragraph 2 provides that nothing in the WCPF Convention constitutes recognition of the claims or positions of any members of the Commission concerning the legal status and extent of waters and zones claimed by such members. Paragraph 3 provides that the WCPF Convention applies to all stocks of highly migratory fish stocks in this area except for sauries.

The Convention area is based on the objective of the WCPF Convention, including, as a basic corollary of the objective, ensuring, insofar as possible, coverage of the full migratory range of the species concerned.

In delineating the Convention Area, account had to be taken of the existence of other agreements dealing with highly migratory species in the Pacific, as well as the complex geographic and legal situation regarding waters off the coasts of Southeast Asia. In the east, the Convention Area abuts waters subject to regulation by the Inter-American Tropical Tuna Commission (IATTC). The southern limits follow the northern limits of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), while the northern limit of the Convention area is self-defining.

With respect to the Convention area's western limit, there is no generally agreed upon definition of the extent of Pacific waters in the East and Southeast Asian area, among other reasons, because

of intractable disputes over maritime boundaries in the South China Sea and elsewhere. Article 3, therefore, does not set forth a specific western limit of the WCPF Convention area. Rather, it provides (Paragraph 3) that conservation and management measures shall be applied throughout the range of the stocks, or to specific areas within the WCPF Convention area, as determined by the WCPF Commission. In other words, it is recognized that the most practical approach is to provide for the WCPF Commission to address specific western limits in relation to those specific conservation and management measures whose scope or content requires it.

The area of the WCPF Convention was a contentious issue in the negotiations. There was initially strong sentiment in favor of limiting the area to those waters south of latitude 20° north. This view reflected concern on the part of FFA members to retain a South Pacific focus in the WCPF Convention, as well as concern by Asian fishing States over inclusion of waters off their coasts and stocks found primarily in this northern area (*e.g.,* northern albacore and Pacific bluefin tuna). The United States, among others, strongly advocated inclusion of waters north of latitude 20° north, since the range of important stocks (*e.g.,* skipjack, yellowfin and bigeye tuna stocks) extends into these waters. Excluding this area would have left such stocks unmanaged through a significant portion of their range and would not have covered the exclusively northern stocks at all. The resulting Convention area does include the waters under U.S. jurisdiction around the State of Hawaii and the U.S. Pacific territories. However, measures adopted under the Convention will not affect U.S. law with respect to foreign fishing activities within the EEZ of the United States.

Agreement on the text of Article 3 providing for inclusion in the WCPF Convention area of all waters of the western and central Pacific (including the northern area) was linked to the establishment of a semi-autonomous committee (known as the Northern Committee) with specific responsibilities for the area north of latitude 20° north, to consist of Commission members located or fishing there (see Article 11 below). This compromise reflects the specific circumstances of the northern area without arbitrarily dividing the Convention Area, which would have undercut efforts aimed at the conservation and management of major tuna populations throughout their range and would have unnecessarily fragmented the management of highly migratory species in the Pacific.

Article 4 reaffirms the consistency of the WCPF Convention with the provisions of the LOS Convention and the UN Fish Stocks Agreement. It specifies that nothing in the WCPF Convention shall prejudice rights, jurisdiction and duties under the LOS Convention and the UN Fish Stocks Agreement and that the WCPF Convention is to be interpreted and applied consistently with the LOS Convention and UN Fish Stocks Agreement.

Part II—Conservation and Management of Highly Migratory Fish Stocks (Articles 5–8)

Article 5 sets forth general principles and measures for the conservation and management of highly migratory fish stocks in the WCPF Convention area, including obligations upon members of the Commission to:

—adopt measures to ensure the long-term sustainability of the stocks and promote their optimum utilization;

—base such measures on the best scientific evidence available;

—apply the precautionary approach;

—assess the impacts of fishing and other relevant impacts on target stocks and non-target species and the ecosystems of which they are part;

—adopt measures to minimize waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, and impacts on associated or dependent species, in particular endangered species, and also to promote selective and environmentally sound fishing gear and practices;

—take measures to prevent or eliminate over-fishing and excess fishing capacity;

—collect and share complete, accurate and timely data concerning fishing activities; and

—ensure compliance with conservation and management measures through effective monitoring, control and surveillance.

Article 6 elaborates the obligation to apply the precautionary approach to fisheries management (set forth in Article 5). It provides that members of the WCPF Commission shall be more cautious when information is uncertain, unreliable or inadequate and that the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures. It also incorporates as an integral part of the WCPF Convention the Guidelines for the Application of Precautionary Reference Points in Conservation and Management of Highly Migratory Fish Stocks set forth in Annex II of the UN Fish Stocks Agreement, and requires action to implement them.

Articles 7 and 8 obligate members of the Commission to exercise, and to cooperate in the exercise of, their rights as coastal States in areas under their national jurisdiction and as flag States on the high seas so as to ensure effective conservation and management of highly migratory fish stocks throughout their range within the WCPF Convention area.

Article 7 makes clear that the principles and measures for conservation and management set forth in Article 5 are to be applied by coastal States in areas under national jurisdiction in the WCPF Convention area. It specifies that Commission Members shall give due consideration to the respective capacities of developing states and their need for assistance in implementing the WCPF Convention.

Article 8 requires that conservation and management measures established for the high seas and those adopted for the areas under national jurisdiction be compatible to ensure conservation and management of highly migratory fish stocks throughout their range. Members of the WCPF Commission have a duty to cooperate to achieve compatible measures.

The Commission, in establishing compatibility, is to take into account a number of factors in adopting conservation and management measures, including the biological unity and characteristics of

the stocks, their geographical distribution and fishing patterns. The WCPF Commission is further called upon to take into account conservation and management measures adopted by coastal States for such stocks in areas under national jurisdiction, consistent with the LOS Convention, and to ensure that the effectiveness of those measures is not undermined by measures it adopts for the WCPF Convention Area as a whole. Conversely, coastal States are to ensure that measures they adopt and apply to highly migratory fish stocks in areas under their national jurisdiction do not undermine the effectiveness of measures adopted by the WCPF Commission in respect of the same stocks.

Part III—Commission for the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

Section 1—General Provisions (Articles 9–11)

Article 9 provides for establishment of the WCPF Commission and deals with a number of organizational issues, including meetings, election of officers, the Commission's legal capacity, privileges and immunities of the Commission and its officers and adoption of rules of procedure.

Article 9, paragraph 2, in combination with Annex I of the WCPF Convention—Fishing Entities—addresses participation in the WCPF Convention by a "fishing entity." The term, drawn from the UN Fish Stocks Agreement, refers to Taiwan (Chinese Taipei). These provisions incorporate compromise formulations to ensure that fishing vessels of Taiwan are legally bound by the conservation and management regime of the WCPF Convention, including measures adopted pursuant to it. The compromise had to balance two opposing realities: first, the necessity for Taiwan to take part in the work of the Commission, including decision-making, in order for resulting measures to be binding upon its vessels; and second, the fact that a number of the participants in the negotiations (not least China) do not have diplomatic relations with Taiwan and do not recognize it as having the capacity to become a Contracting Party to international agreements, such as the WCPF Convention.

Article 9 and Annex I of the WCPF Convention specifically provide that, after entry into force of the WCPF Convention, a fishing entity whose vessels fish for highly migratory fish stocks in the Convention area may by written instrument agree to be bound by the regime established by the Convention. Such a fishing entity shall participate in the work of the WCPF Commission, including decisionmaking, and shall assume obligations under the WCPF Convention. References in the text of the Convention to the work of the Commission and the obligations of Commission members therefore include the work and obligations of such a fishing entity as well as the Contracting Parties. In other words, Taiwan is treated as a Member of the Commission, but not as a Contracting Party. Further, the basic rights and obligations in the WCPF Convention are carefully formulated so as to apply to members of the Commission. Three political decisions are reserved to Contracting Parties only—accession of new States to the Convention; location of the headquarters of the WCPF Commission; and appointment of the

Executive Secretary. In addition, the WCPF Convention provides that the Commission shall elect a chairman and a vice-chairman from amongst the Contracting Parties only. Taiwan will participate in the WCPF Convention as Chinese Taipei. Under this name, upon adoption of the WCPF Convention on September 5, 2000, it signed (with the MHLC Chairman) a separate Arrangement for the Participation of Fishing Entities that includes a declaration of intent on the part of Chinese Taipei. As described above, as of November 2004 Taiwan as Chinese Taipei is bound by the WCPF Convention and may participate in the work of the Commission in accordance with the Convention's provisions.

Article 9, paragraph 3, specifies that the Commission shall hold an annual meeting and such other meetings as may be necessary to carry out its functions.

Article 10 sets forth the functions of the WCPF Commission. The Commission is authorized to adopt such measures and recommendations as are necessary to give effect to the objective of the WCPF Convention. Article 10 includes an extensive, but not exhaustive, list of specific Commission functions. These include determination of total allowable catch of or total level of fishing effort for highly migratory fish stocks in the WCPF Convention area and adoption of measures relating, *inter alia*, to the permitted catch of any species or stock, the level of fishing effort, limitations on fishing capacity, fishing areas and seasons, size limits, permitted fishing gear and technology, and fishing regions or subregions. They also include:

—adoption of conservation and management measures to maintain or restore non-target species to healthy levels;

—adoption of standards for collection, verification, timely exchange and reporting of fisheries data in accordance with Annex I of the UN Fish Stocks Agreement (that sets forth such standards in detail) that is deemed to form an integral part of the WCPF Convention;

—compilation and dissemination of accurate and complete statistical data, while maintaining appropriate confidentiality;

—establishment of cooperative mechanisms for effective monitoring, control and enforcement;

—adoption of the budget and other administrative responsibilities; and

—adoption of any measures or recommendations necessary for achieving the WCPF Convention's objective.

The WCPF Commission is further authorized to adopt decisions relating to the allocation of total allowable catch or total level of fishing effort of highly migratory fish stocks in the WCPF Convention area. In this regard, the WCPF Commission is called upon to develop, where necessary, allocation criteria. Article 10, paragraph 3, outlines a number of factors to be taken into account in order to reflect and balance the interests and needs of Commission members, including those of coastal States and distant water fishing nations.

Article 11 concerns subsidiary bodies of the Commission. It specifically establishes as subsidiary bodies of the WCPF Commission a Scientific Committee and a Technical and Compliance Committee, with each member of the Commission entitled to member-

ship. Each Committee is to make recommendations on matters within its competence to the WCPF Commission. Each is also required to provide a report to each annual meeting of the Commission. Such reports are to be adopted by consensus if possible but to include all views if consensus is not possible.

Article 11, paragraph 7, provides that the WCPF Commission shall establish a committee (the Northern Committee) to deal with issues relating to that part of the WCPF Convention area north of latitude 20° north. The Northern Committee is to consist of those members of the WCPF Commission situated or fishing in that area. Its functions are to make recommendations on the formulation of conservation and management measures for stocks that occur mostly in the northern area and on the implementation of conservation and management measures adopted by the WCPF Commission for that area. Such recommendations are to be consistent with the general policies and measures adopted by the WCPF Commission in respect to the stocks or species in question and with the principles and measures for conservation and management set forth in the WCPF Convention.

Recommendations of the Northern Committee are adopted by consensus of its members. The WCPF Commission, in turn, is required to base its decisions concerning measures relating to particular stocks and species in the northern area on the recommendations of the Committee. If a recommendation fails to be adopted by the WCPF Commission, it is to be returned to the Committee for further consideration.

As noted in the analysis of Article 3 above (page 13), the provisions on the Northern Committee are an important part of the compromise solution on the WCPF Convention area. However, how these provisions would function in practice required clarification and elaboration in further rules of procedure. Such rules were drafted by the Preparatory Conference and adopted at the inaugural WCPF Commission meeting as part of the rules of procedure for the Commission. The rules make it clear that the Northern Committee will have substantial autonomy in its area of competence. The Northern Committee is accorded the initiative with respect to conservation and management of fish stocks occurring mostly in the northern area and the WCPF Commission is not to adopt conservation an management measures specific to those species—northern albacore, Pacific blue fin tuna and northern swordfish without a recommendation of the Northern Committee. Clarification of the latter point was particularly important to Japan.

Article 11 also provides that the WCPF Commission may establish such other subsidiary bodies as it deems necessary.

Section 2—Scientific Information and Advice (Articles 12–13)

Articles 12 and 13 envisage a system designed to provide the WCPF Commission with the best available scientific information for making conservation and management decisions. The Scientific Committee is established as a forum in which representatives of the members of the WCPF Commission provide scientific advice to the Commission. Article 12 sets forth in detail the functions of the Scientific Committee, including the promotion of necessary scientific research. Article 13 provides that the WCPF Commission

may also engage the services of scientific experts to provide information and advice on the fishery resources covered by the WCPF Convention. The WCPF Commission may enter into administrative and financial arrangements for such scientific services, utilizing to the greatest extent possible the services of existing regional organizations. Article 13 also sets forth in detail the functions that may be performed by scientific experts engaged by the WCPF Convention, including the conduct of scientific research.

While scientific experts engaged by the Commission pursuant to Article 13 are to provide the results of their work directly to the WCPF Commission, such results are also to be provided to the Scientific Committee. In turn, the Committee is to review and comment on the work of the scientific experts prior to its consideration by the Commission, and may recommend specific issues arid items for consideration by the experts.

This approach on who should provide scientific advice to the WCPF Commission represents a middle ground between those advocating the provision of scientific advice by scientists representing individual members of the Commission and those advocating the provision of such advice by independent scientific experts responsible to the WCPF Commission and not representing individual members. Both approaches reflect a desire to draw on the knowledge and experience of the Oceanic Fisheries Program of the Pacific Community (formerly the South Pacific Commission), which has been the primary regional scientific body dealing with highly migratory fish stocks in the Western and Central Pacific. In particular, FFA members who have long looked to the Oceanic Fisheries Program, and specifically to its Standing Committee on Tuna and Billfish for advice, supported reliance upon the expertise of the Program.

Section 3—The Technical and Compliance Committee (Article 14)

Article 14 enumerates the functions of the Technical and Compliance Committee. These include providing the WCPF Commission with information and technical advice on the implementation of, and compliance with, conservation and management measures; monitoring and reviewing compliance with such measures; and reviewing the implementation of monitoring, control, surveillance and enforcement measures adopted by the WCPF Commission, as well as making recommendations on these matters. The Technical and Compliance Committee, in consultation with the Scientific Committee, is also called upon to recommend to the WCPF Commission priorities and objectives for the regional observer program, to assess its results, and to make recommendations on fishing gear and technology that may be used.

Section 4—The Secretariat (Articles 15–16)

Article 15 empowers the WCPF Commission to establish a permanent Secretariat consisting of an Executive Director and such other staff as the Commission may require. The Executive Director is to be appointed for a four-year term with possible re-appointment for an additional four-year term. The Executive Director is to serve as the chief administrative officer of the WCPF Commission

and to act in that capacity at meetings of the Commission and its subsidiary bodies, as well as to perform such other administrative functions as may be assigned by the Commission.

Secretariat functions include handling the official communications of, preparing administrative and other reports for, and publishing the decisions of the WCPF Commission and its subsidiary bodies. It is also called upon to facilitate the compilation and dissemination of data necessary to accomplish the objective of the WCPF Convention and administer agreed arrangements for monitoring, control and surveillance and the provision of scientific advice. The Secretariat is to be cost effective and, where appropriate, is to take into account the ability of existing regional institutions to perform certain technical secretariat functions.

Article 16 provides that the Executive Director appoints the staff of the Secretariat.

Section 5—Financial Arrangement of the Commission (Articles 17–19)

Article 17 identifies the sources of the funds of the Commission as:

—contributions assessed in accordance with Article 18;

—voluntary contributions;

—the fund to facilitate effective participation in the work of the WCPF Commission (see Article 30); and

—any other funds which the WCPF Commission may receive.

It also provides for the WCPF Commission to adopt financial regulations for the administration of the Commission and the exercise of its functions.

Article 18, paragraph 1 provides that the WCPF Commission adopt, by consensus, its budget on the basis of a draft budget prepared by the Executive Secretary.

The WCPF Commission is to adopt, by consensus, and amend as necessary, a scheme for determining the assessed contributions to the budget to be made by each member of the Commission. Paragraph 2 of Article 18 calls for due consideration to be given to each member being assessed each of the following:

—a basic fee equal in amount for all members;

—a fee based on national wealth, reflecting the state of development of the member concerned and its ability to pay; and

—a variable fee.

The variable fee is to be based, *inter alia,* on the total catch taken within EEZs and in areas beyond national jurisdiction in the WCPF Convention Area of such species as may be specified by the WCPF Commission, with a discount factor for catch taken in the EEZ of a member of the Commission which is a developing State or territory by vessels flying the flag of that member. The criteria for the budget Contribution formula reflects the growing trend in regional fishery management organizations to base significant portions of assessed budgetary contributions on catch—linking contributions by participants to the benefits they receive from conservation and management of the resource. The discount factor reflects the recognition of the key role that development of fisheries

can play in the economic development of the developing Pacific island States.

Article 18 also includes provisions by which members lose the right to participate in decisions of the Commission if they are two years or more in arrears in their assessed contributions to the budget.

Article 19 requires an annual audit, by an independent auditor, of the records, books, and accounts of the WCPF Commission.

Section 6—Decision-making (Article 20)

The WCPF Convention's procedures on decision-making represent a careful balance between Members' interest in having their views reflected in decisions and their interest in not permitting any single Member to block moving forward on important conservation decisions. In the exceptional case where consensus may not be possible, the chambered voting system balances the interests of distant water fishing states and coastal states. The system created by the provisions of the Convention ensures, with all reasonable certainty, that distant water fishing states will not be bound by significant measures to which they do not agree. At the same time, it ensures that failure to reach consensus will not prevent the adoption of important measures that may be necessary for the conservation and management of the resources in question. The provisions of the Convention serve the interests of the United States, as both a distant water fishing nation and a coastal state in the Convention Area, by offering protections for decisions on issues of significant importance to the United States, while not creating a system where necessary conservation and management measures for fisheries stocks of economic value to the U.S. fishing industry could not be adopted.

Specifically, the balance is achieved through two interlinked elements. The first is to provide for differing majorities for different types of decisions. Decisions by consensus are required on a number of key issues—allocation of total allowable catch or the total level of fishing effort, exclusion of vessel types, adoption and amendment of the rules of procedure of the Commission and those for subsidiary bodies, adoption of budgets and the formula for budgetary contributions, and amendments of and invitations to accede to the Convention. Decisions on other matters of substance—provided that efforts to achieve consensus have been exhausted—are to be taken by a three-fourths majority.

The second element is, as noted above, the addition of chambered voting requirements for decisions on those matters of substance where consensus is not required. Affirmative decisions on these matters require not only an overall three-fourths majority of members of the WCPF Commission. They also require support by three-fourths of members of the WCPF Commission who are also members of the FFA and three-fourths of members of the Commission who are not members of the FFA, provided that no such decision shall be defeated by two or fewer votes of either group (*i.e.,* in either "chamber").

The WCPF Convention's decision-making system creates strong incentives for the Commission to carry out all its work by consensus, while limiting the possibility of an impasse inherent in a

system formally requiring consensus on all decisions. At the same time, it avoids the uncertainties and inequities that can result from a system permitting members of the WCPF Commission to opt out of decisions once taken. The chambered voting requirements provide important safeguards, in particular for members of the WCPF Commission who define their interests primarily from a distant water fishing perspective and ensures, with reasonable certainty, that members of the Commission will not be bound by measures with which they are in basic disagreement.

To provide an additional safeguard, *Article 20* also makes provision for a member of the Commission that votes against a decision of the Commission or that is absent when the decision is taken to seek a review of the decision. Such a request is to be made within 30 days of the decision. (Decisions of the WCPF Commission normally become binding 60 days after adoption.) Article 20 sets forth two grounds for seeking a review: inconsistency with the provisions of the WCPF Convention, the UN Fish Stocks Agreement or the LOS Convention; or unjustifiable discrimination in form or in fact against the member of the Commission in question. The review is to be undertaken by a review panel constituted in accordance with the procedures set forth in Annex II of the WCPF Convention.

Annex II provides for constitution of a three-person arbitral panel modeled on Annex VIII of the LOS Convention on Special Arbitration, with the members chosen from among the arbitrators expert in the field of fisheries referred to in Article 2 of Annex VIII. If the panel finds that the decision need not be changed or revoked, the decision becomes binding 30 days after the panel's report. If the panel recommends change or revocation, the WCPF Commission is called upon to conform the decision to the findings of the panel at its next meeting.

Section 7—Transparency and Cooperation with Other Organizations (Articles 21–22)

Article 21 calls upon the WCPF Commission to promote transparency in its decision-making processes and other activities. To this end, representatives from intergovernmental organizations and non-governmental organizations concerned with matters relevant to the implementation of the WCPF Convention are to be afforded the opportunity to participate in meetings of the WCPF Commission and its subsidiary bodies as observers. The rules of procedure are not to be too restrictive in this respect and are to provide that such organizations be given timely access to pertinent information.

Article 22 deals with cooperation with other organizations. The WCPF Commission necessarily will have significant interactions with other relevant management organizations. The most extensive of these interactions will take place with the Inter-American Tropical Tuna Commission (IATTC). The IATTC is responsible for the conservation and management of highly migratory species in the Eastern Tropical Pacific. The geographic range of certain important stocks brings those stocks within the competence of both organizations.

In addition, the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is responsible for the conservation and management of that species, throughout its high seas range. This range

falls largely within the area covered by the WCPF Convention. The Indian Ocean Tuna Commission (IOTC), as its name indicates, covers the Indian Ocean, but there is a small area of overlap between the IOTC area and the WCPF Convention area south of Australia. Finally, the southern boundary of the WCPF Convention area abuts the area managed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

The overlapping and adjacent competencies of these organizations offer the opportunity to more fully achieve their respective objectives, particularly in ensuring the effective conservation and management of highly migratory species throughout their range. With this in mind, the WCPF Convention obligates the WCPF Commission to consult, cooperate and collaborate with other relevant management organizations, particularly those which can contribute to the objective of the WCPF Convention, specifically IATTC, CCSBT, IOTC and CCAMLR.

In situations where the WCPF Convention area overlaps with an area under regulation by another fisheries management organization, the WCPF Commission is further enjoined to cooperate with the other fisheries organization to avoid duplication of measures in respect of stocks in that area that are regulated by both organizations. With respect to IOTC, the possibility of such duplication seems remote at this point, but this provision provides a safeguard. With respect to CCSBT, there was a general understanding during the MHLC negotiation that southern bluefin tuna would continue to be the province of CCSBT and would not be managed by the WCPF Commission. The provision on duplication confirms that understanding.

With respect to IATTC, while there exists the possibility of duplication of otherwise independently adequate measures, the more likely situation is one in which the migratory pattern of a particular stock, by bringing it within the competence of both organizations, will lead to inconsistent or partial conservation and management measures. For this reason, the WCPF Convention also includes a specific provision calling for the WCPF Commission to initiate consultations with the IATTC to agree upon consistent conservation and management measures, including measures relating to monitoring, control and surveillance, for stocks that occur in the convention areas of both organizations.

As noted above, Article 3 of the WCPF Convention (dealing with the area of application) includes a provision that conservation and management measures shall be applied throughout the range of the stocks or to specific areas within the Convention area, as determined by the WCPF Commission. This provision, in part, anticipates future interaction with other fisheries management organizations.

Finally, the WCPF Commission is called upon to cooperate with the United Nations Food and Agriculture Organization (FAO) and other relevant specialized agencies and bodies of the United Nations on matters of mutual interest.

Part IV—Obligations of Members of the Commission (Article 23)

Part IV, and the following three parts of the WCPF Convention in particular, reflect an emphasis on the importance of unambig-

uous obligations and detailed procedures for ensuring implementation of the Convention, as well as for ensuring compliance with its provisions and with the conservation and management measures adopted pursuant to it. These parts draw, in significant degree, not only on the LOS Convention and the UN Fish Stocks Agreement, but also on the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement) and innovative regional fishery management agreements, such as CCAMLR.

Article 23 requires each member of the WCPF Commission to promptly implement all measures adopted under the WCPF Convention, as well as to cooperate in furthering the objective of the Convention. Each member of the Commission is to provide to the Commission statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement (which specifies in detail the categories of such data and information), information concerning its fishing activities, including fishing areas and fishing vessels, and other data and information as required by the Commission, in order to facilitate compilation of reliable catch and effort statistics.

Members of the WCPF Commission are likewise obligated to report to the Commission on steps they have taken to implement conservation and management measures adopted by the Commission, as well as relevant measures they have adopted individually for areas under their national jurisdiction and for vessels flying their flag that fish in the Convention area as a whole.

Article 23 also includes a provision calling upon members of the WCPF Commission to take steps to deal with involvement by their nationals in unauthorized fishing for highly migratory fish stocks in the WCPF Convention area. Paragraph 5 calls upon Members to take measures, to the greatest extent possible, to ensure that fishing vessels owned or controlled by its nationals and fishing in the Convention area comply with the provisions of the WCPF Convention.

Part V—Duties of the Flag State (Article 24)

Article 24 requires each member of the WCPF Commission to take measures to ensure that fishing vessels flying its flag comply with the provisions of the WCPF Convention and with conservation and management measures adopted pursuant to it and that such vessels do not engage in any activity that undermines the effectiveness of such measures. Each member is likewise to ensure that vessels flying its flag do not conduct unauthorized fishing in areas under the national jurisdiction of any member in the WCPF Convention area.

Article 24 provides that no member of the WCPF Commission shall allow vessels entitled to fly its flag to be used for fishing for highly migratory fish stocks in the WCPF Convention area in areas beyond its national jurisdiction unless it has been authorized to do so by the appropriate authority of that member. A member of the WCPF Commission is obligated to authorize a vessel entitled to fly its flag to engage in such fishing only if it is able to exercise effective control over the vessel pursuant to its responsibilities under

the LOS Convention and the UN Fish Stocks Agreement, as well as the WCPF Convention.

It is to be a condition of every authorization to fish issued by a member of the Commission that each fishing vessel in respect of which the authorization is issued:

—conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any license, permit or authorization required by such other State; and

—is operated on the high seas in the WCPF Convention area in accordance with the requirements of Annex III to the WCPF Convention.

Annex III—Terms and Conditions for Fishing—is designed to reinforce the obligations of the members of the Commission to ensure that fishing vessels flying their flag comply with conservation and management obligations by setting forth terms and conditions for fishing that directly bind the operator of the vessel. "Operator" refers to any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer.

The terms and conditions include obligations upon the operator of the vessel:

—to comply with applicable national laws of each coastal State Party to the WCPF Convention when the vessel enters waters under the jurisdiction of such State;

—to facilitate and assist observers designated under the WCPF Convention's regional observer program (see Article 28) in carrying out their duties;

—to comply with measures adopted by the WCPF Commission with respect to transshipment (Article 29); and

—to record and report the fisheries data and information in accordance with Annex I of the UN Fish Stocks Agreement.

Annex III also includes requirements to promote effective enforcement of conservation and management obligations, including requirements for authorized fishing vessels to carry on board their authorization or authorizations to fish; cooperate with authorized inspectors; be marked or identified in accordance with standard international specifications; monitor an international distress and calling radio frequency or the international safety and calling frequency; and stow fishing gear at all times when navigating through waters in the WCPF Convention area in which it is not authorized to fish.

Article 24 also requires each member of the WCPF Commission to maintain an up-to-date record of all fishing vessels entitled to fly its flag that it authorizes to be used for fishing in the WCPF Convention area beyond its area of national jurisdiction and to provide annually to the Commission the information set out in Annex IV of the Convention with respect to each such vessel. Annex IV—Information Requirements—includes a detailed list of this information, which ranges from the name of the ship, its port of registry and registration number, its ownership and the master of the vessel, to its description, tonnage and types of fishing methods employed. Each member of the WCPF commission is to inform the Commission promptly of any additions to its vessel record as well as any deletions from it, along with the circumstances or reasons

for such deletion. The WCPF Commission is required to maintain its own vessel register, which is to incorporate the information on authorized fishing vessels reported by individual members of the Commission, and is to make it available to all members of the Commission.

Finally, Article 24 calls for the establishment of a WCPF Convention Vessel Monitoring System (VMS), in recognition of the contribution to effective compliance that can be made by placement of near real-time satellite position-fixing transmitters on board fishing vessels. To this end, each member of the WCPF Commission is to require its vessels fishing for highly migratory species on the high seas in the WCPF Convention area to use such transmitters. The WCPF Commission is called upon to operate the VMS for all such vessels. The Commission is to develop standards, specifications and procedures for the use of the transmitters, as well as procedures for receiving information through the VMS. The WCPF Convention requires that such procedures include measures to protect the confidentiality of information received by the WCPF Commission, and provides that information transmitted through the VMS be received directly by the Commission and simultaneously by the flag State of the vessel where the flag State so requires.

This latter point was the subject of considerable debate during the negotiations, with several participants calling for VMS information from fishing vessels to be transmitted to the flag State and then to the WCPF Commission. The text of the WCPF Convention on this point—with the possibility of simultaneous receipt of information by the WCPF Commission and the flag State—is designed to ensure that all vessels fishing on the high seas are treated equally and to avoid any appearance that fishing vessel position data could be altered prior to receipt by the Commission. Development of an operational VMS by the WCPF Commission will involve significant work on technical aspects as well as on procedures.

Part VI—Compliance and Enforcement (Articles 25–27)

Article 25 requires members of the WCPF Commission to enforce the provisions of the WCPF Convention and conservation and management measures adopted pursuant to it. Each member of the Commission is to fully and promptly investigate alleged violations by vessels flying its flag, and to take expeditious action to punish offenders. Sanctions are to be adequate in severity to discourage further violations and to deprive the offenders of the benefits of their illegal activities. When a member of the WCPF Commission has established, in accordance with its laws, that a fishing vessel flying its flag has committed a serious violation, that member shall ensure that the vessel in question ceases all fishing activities until any resulting sanctions imposed by the flag State have been complied with. A "Serious violation" is defined by reference to Article 21 of the UN Fish Stocks Agreement and includes fishing without a valid flag State authorization, license, or permit; failure to record catch and catch-related data or misreporting of such data; fishing in a closed area, during a closed season, for a prohibited stock, or for a permitted stock after attainment of a quota on that stock; using prohibited fishing gear; falsifying or concealing the identity

of a fishing vessel; and concealing, tampering with, or destroying evidence relating to an investigation.

Article 25 calls for members of the WCPF Commission to cooperate in compliance and enforcement efforts, directly and through the Commission, by exchanging information about alleged violations and through joint activities to deter fishing violations—by fishing vessels of WCPF Commission members and by fishing vessels of non-Parties alike. Paragraph 6 requires a flag State to cooperate with a coastal State where there are reasonable grounds for believing that a fishing vessel of the flag State has previously engaged in unauthorized fishing in an area under the national jurisdiction of the coastal State. In such cases, cooperation may include authorization for authorized officers of the coastal State to board and inspect the vessel on the high seas.

Article 25 also calls for members of the WCPF Commission to take action, directly or through the Commission, to prevent fishing vessels of members and of non-Parties which have engaged in fishing activities that undermine the effectiveness of conservation and management measures adopted by the Commission from fishing in the WCPF Convention area until such time as appropriate action is taken by their flag State. In this regard, the WCPF Commission is directed to develop procedures, consistent with the international obligations of members of the Commission, whereby non-discriminatory trade measures may be taken against any State or fishing entity whose fishing vessels fish in a manner that undermines the effectiveness of conservation and management measures adopted by the Commission.

Article 26 provides that the WCPF Commission establish procedures for the boarding and inspection of fishing vessels on the high seas of the WCPF Convention area. Article 26 further provides that, if the WCPF Commission is unable to agree on such procedures within two years of entry into force of the WCPF Convention, the boarding and inspection procedures of the UN Fish Stocks Agreement (Articles 21 and 22) shall be applied as if they were part of the WCPF Convention. In that event, boarding and inspection of fishing vessels in the WCPF Convention area are to take place in accordance with those procedures and such additional practical procedures as the WCPF Commission may decide are necessary.

The boarding and inspection procedures of the UN Fish Stocks Agreement provide that a State Party to the Agreement that is also a member of a regional fishery management organization, may board and inspect vessels flying the flag of another State Party on the high seas in the area covered by the regional fishery management organization even if the fishing vessel's flag State is not a member of the regional organization.

In addition, the procedures of the UN Fish Stock Agreement give the inspecting State certain rights to take enforcement action against vessels they inspect on the high seas if there is evidence of a serious violation of conservation and management measures in force and the flag State does not step in to exercise its responsibilities with respect to the vessel. In fact, a principal objective of these procedures is to compel flag States of fishing vessels to fulfill

their responsibility of ensuring that their vessels adhere to conservation and management measures in force.

The UN Fish Stocks Agreement also includes safeguards. to protect flag States and their fishing vessels from abuse of high seas boarding and inspection rights, as well as steps to be taken, both by authorized inspectors and by masters of inspected vessels, to ensure that boarding and inspection procedures are carried out in a balanced and effective fashion.

Article 26 of the WCPF Convention sets forth several general obligations to be included in future WCPF procedures for boarding and inspection. Specifically, all vessels used for high seas boarding and inspection in the Convention area shall be clearly marked and identifiable as being on government service and authorized to undertake high seas boarding and inspection in accordance with the Convention. Also, each member of the WCPF Commission shall ensure that fishing vessels flying its flag accept boarding by duly authorized inspectors. Inspectors, in turn, are required to comply with the applicable high seas boarding and inspection procedures.

Article 27 sets forth the right and duty of port States to take measures, in accordance with international law, to promote the effectiveness of conservation and management measures. It reiterates the rule of international law with respect to port States in providing that whenever the fishing vessel of a member of the WCPF Commission enters the port or offshore terminal of another member, the port State may, *inter alia*, inspect documents, fishing gear, and catch on board the vessel. Article 27 also provides that members of the WCPF Commission may adopt regulations to prohibit landings and transshipments of fish catch in their ports in cases where it is established that the catch has been taken in a manner that undermines the effectiveness of conservation and management measures adopted by the Commission.

Part VII—Regional Observer Programme and Regulation of Transshipment (Articles 28–29)

Article 28 calls for the WCPF Commission to develop a regional observer program to collect verified catch data, other scientific data and information on fishing activities in the WCPF Convention area and to monitor the implementation of conservation and management measures adopted by the Commission. The program is to be coordinated by the Secretariat and is to consist of independent and impartial observers authorized by the Secretariat. Each member of the Commission is to ensure that any vessel flying its flag in the WCPF Convention Area, except for those vessels that fish exclusively in waters under the national jurisdiction of that member, is prepared to accept an observer from the program. Article 28 reiterates the obligations of vessel operators to facilitate and assist the work of observers set forth in Article 3 of Annex III to the WCPF Convention. It also enumerates guidelines for the operation of the program, including requirements for a sufficient level of coverage to ensure that the WCPF Commission receives appropriate data and information on catch and related matters in the WCPF Convention area, as well as requirements for training and certification of observers, for reporting their findings to the Commission and

that observers not unduly interfere with the operations of the vessels on which they are placed.

In addition to implementing these guidelines, the WCPF Commission is also called upon to develop further components of the program, including procedures for ensuring confidentiality of non-aggregated catch data and other information collected by observers, for disseminating data and information collected by observers to members of the Commission, and for defining the respective rights and duties of observers and of the master and crew of fishing vessels when an observer is on board.

Article 29 calls for members of the WCPF Commission to encourage their fishing vessels to conduct transshipment of fish catch in port to promote accurate reporting of catches and provides that such members may designate one or more of their ports as transshipment ports. The WCPF Commission, in turn, is to circulate up-to-date lists of designated ports periodically. The Commission is to develop procedures to obtain and verify data on the quantity and species transshipped both in port and at sea in the WCPF Convention area.

Transshipment at sea in the WCPF Convention area beyond areas of national jurisdiction is to take place only in accordance with the provisions of Annex III of the WCPF Convention and any procedures established by the WCPF Commission. Article 4 of Annex III requires operators of fishing vessels to comply with measures adopted by the WCPF Commission with respect to transshipment and to facilitate and assist the work of any person authorized either by the Commission or by the member of the Commission in whose designated port the transshipment takes place.

Finally, Article 29 prohibits transshipment at sea by purse seine vessels (the category of vessel with greatest on-board catch storage capacity), subject to specific exemptions that the WCPF Commission adopts to reflect certain existing operations (in particular, where requiring transshipment in port would render the operation uneconomic).

Part VIII—Requirements of Developing States (Article 30)

Article 30 calls upon the WCPF Commission to give full recognition to the special requirements of developing States Parties to the WCPF Convention, in particular small island developing States, and the territories and possessions of other States Parties. In giving effect to the duty to cooperate in the establishment of conservation and management measures, the WCPF Commission is to take into account, *inter alia*, the dependence of developing States Parties, in particular small island developing States, upon marine living resources and the interests of their subsistence fishers and fish workers.

The Commission is directed to establish a fund to facilitate the effective participation of developing States Parties, in particular small-island developing States and, where appropriate, the territories and possessions of other States Parties, in the work of the Commission.

Cooperation with developing States, as well as with the territories and possessions of other States, for the purposes of Article 30 is also understood to include the possibility of provision of finan-

cial assistance to aid them in achieving the objective of the WCPF Convention, but Article 30 does not legally require such assistance.

Part IX—Peaceful Settlement of Disputes (Article 31)

An important component of the WCPF Convention's regime for the conservation and management of highly migratory species is an effective system of dispute settlement.

Article 31 makes provision for such a system by applying the dispute settlement provisions of the UN Fish Stocks Agreement to any dispute between members of the WCPF Commission. The United States became the third Party to the UN Fish Stocks Agreement on August 21, 1996, and has since been a strong supporter of the Agreement.

Part X—Non-Parties to the Convention (Article 32)

Article 32 calls upon members of the WCPF Commission to take measures, consistent with the WCPF Convention, the UN Fish Stocks Agreement and the LOS Convention, to deter the activities of vessels flying the flags of non-Parties to the WCPF Convention which undermine the effectiveness of conservation and management measures adopted by the Commission. These measures include the exchange of relevant information among members of the WCPF Commission, drawing the attention of the non-Party to the activities of its vessels, requesting the non-Party to cooperate in the implementation of the conservation and management measures adopted by the Commission, and the possibility that the non-Party attend meetings of the Commission as an observer.

Part XI—Good Faith and Abuse of Rights (Article 33)

Article 33 sets forth a provision common to international agreements to the effect that the obligations of the WCPF Convention are to be fulfilled in good faith and that rights recognized under the Convention are not be exercised in a way that would constitute an abuse of right.

Part XII—Final Provisions (Articles 34–44)

Articles 34 and 35 deal with signature, ratification, acceptance and approval of, as well as accession to, the WCPF Convention. Article 34 provides that the WCPF Convention be open for signature for twelve months by States that participated in the MHLC. Signatory States may become Contracting Parties to the Convention by ratification, acceptance or approval of the WCPF Convention. States that participated in the MHLC, but do not sign the Convention during the twelve-month period may become Contracting Parties by accession. Each Contracting Party is a member of the Commission.

After entry into force of the WCPF Convention, the Contracting Parties may, by consensus, invite other States and regional economic integration organizations whose nationals and vessels fish for stocks covered by the WCPF Convention to accede to it. The European Union was invited to accede at the inaugural WCPF Commission meeting in December 2004.

Article 36 provides two alternative conditions that trigger entry into force of the WCPF Convention. The first provides for entry

into force 30 days after three States situated north of latitude 20° north and seven States situated south of latitude 20° north have deposited the necessary instrument. The second provides that, if within three years of the adoption of the WCPF Convention, three of the States situated north of latitude 20° north have not become Contracting Parties, the Convention shall enter into force six months after thirteen States have deposited their instruments. As noted above, the Convention entered into force on June 19, 2004.

Article 37 and 38, taken together, ensure that States Parties can count on full compliance with the terms of the WCPF Convention, while affording Parties the opportunity to explain exigencies of domestic law with respect to obligations under the Convention.

Article 38 clarifies that the prohibition in Article 37 against reservations to the WCPF Convention does not preclude those joining the Convention from making declarations or statements with a view, *inter alia,* to harmonizing its domestic law with the Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the Convention (and thus constitute a reservation or exception).

Article 39 stipulates that the WCPF Convention shall not affect rights and obligations of Contracting Parties and Fishing Entities arising from other agreements compatible with the Convention. This would include the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

Article 40 deals with amendments to the WCPF Convention. Any member of the WCPF Commission may propose an amendment. Amendments are to be adopted by the Commission by consensus and are to enter into force for Contracting Parties ratifying or acceding to them 30 days after the necessary instruments have been received from a majority of Contracting Parties. An amendment enters into force for each Contracting Party subsequently ratifying or acceding 30 days after the deposit of the necessary instrument by that Party.

Article 41 designates the Annexes to the WCPF Convention as integral parts of the Convention and specifies that a reference to the Convention includes reference to the Annexes. The four Annexes, which deal with certain technical and administrative aspects of the Convention and are discussed above in relation to the article or articles of the WCPF Convention to which they relate, are as follows:

—Annex I—Fishing Entities
—Annex II—Review Panel
—Annex III—Terms and Conditions for Fishing
—Annex IV—Information Requirements

Revisions to the Annexes are adopted by consensus at a meeting of the WCPF Commission. Annex revisions take effect from the date of adoption or from such other date as may be specified. Given their substance, it is not anticipated that such revisions will be submitted to the Senate. In the event that a proposed Annex revision would, because of its nature, require the advice and consent of the Senate in order for the United States constitutionally to be bound by it, the Executive Branch would take the necessary steps to ensure that such a revision does not automatically enter into

force for the United States absent such advice and consent (*e.g.,* by preventing the adoption of such an amendment or by fashioning it as an amendment to the body of the text).

Article 42 provides that a Contracting Party may withdraw from the WCPF Convention upon written notice, effective one year from the date of receipt of the notification, unless the notice specifies a later date. Annex I includes an analogous provision for fishing entities.

Article 43 deals with the complex issue of the participation by territories in the work of the WCPF Commission. This issue was a difficult one in the negotiations since several territories—specifically French Polynesia and New Caledonia—have attained competence for certain matters covered by the WCPF Convention and their political status continues to evolve. French Polynesia and New Caledonia, supported by France, strongly argued that all three should have decision-making authority within the WCPF Commission. The United States took the view that, while there was some divided competence between France and its territories, the territories did not have sufficient authority to give effect to the obligations set forth in the WCPF Convention, including the authority to enter into legally binding international agreements in respect of those obligations, and thus did not meet the test for decision-making status in the WCPF Commission. For both the United States and New Zealand, the matter also raised issues of potential *de facto* discrimination against their territories—American Samoa, Guam and the Northern Mariana Islands for the United States and Tokelau for New Zealand.

The solution to the issue was based, in part, on the tradition of other Pacific institutions that have offered full participation short of voting rights to territories and, in part, on deferring aspects of the issue by agreeing to continue consideration of the matter in light of the evolution of the competence of territories in relation to rights and obligations under the WCPF Convention.

Article 43 reflects this solution. The WCPF Commission and its subsidiary bodies are to be open to participation by each of the following, subject to the appropriate authorization of the Contracting Party having responsibility for their respective international affairs:

—American Samoa
—French Polynesia
—Guam
—New Caledonia
—Northern Mariana Islands
—Tokelau
—Wallis and Futuna

Consistent with this provision, the United States intends to authorize the participation of American Samoa, Guam and the Northern Mariana Islands. The Convention provides for the nature and extent of such participation to be set out in separate rules of procedure, taking into account international law, the distribution of competences on matters covered by the WCPF Convention and the evolving capacity of the territory to exercise rights and responsibilities under the Convention. Article 43 sets forth two additional principles and thus directs their incorporation in these separate

rules of procedure: first, that all participating territories shall be entitled to participate fully in the work of the WCPF Commission, including the right to be present and speak at meetings of the Commission and its subsidiary bodies; and second, that the WCPF Commission, in the performance of its functions and taking decisions, shall take into account the interests of all participants.

The separate rules of procedure described in Article 43 were drafted during the Preparatory Conference and were formally adopted by the WCPF Commission at its inaugural meeting in December 2004. These rules stipulate that a territory listed in Article 43 would become a "Participating Territory" entitled to participate in its own right in the work of the WCPF Commission once the Contracting Party responsible for its international affairs has filed the necessary authorization with the depositary. The authorization is to take the form of a declaration describing the competences of the territory and the extent of its responsibilities.

Participating Territories are to have the right to be present and to speak at meetings of the WCPF Commission and its subsidiary bodies, and are to receive all communications in respect of such meetings. They are not to have rights inconsistent with their territorial status (such as being elected chair or counting toward a quorum). A Participating Territory may make proposals and offer amendments or revisions in relation to matters over which it has competence. In relation to matters over which it does not have such competence, it may only make proposals and offer amendments with the specific authorization of the Contracting Party responsible for its international affairs.

Participating Territories may participate in the WCPF Commission's deliberations aimed at achieving consensus on matters before it. The views of Participating Territories are to be properly considered and taken into account in reaching any decision. Where consensus could be reached on certain key issues but for the views of a Participating Territory with competence over the issue, such Participating Territory may request an additional period of time (up to twelve hours) for additional consultations. However, a Participating Territory may not block consensus on a proposed decision.

Contracting Parties may determine additional rights and restrictions in rules of procedure, as necessary, consistent with Article 43. Finally, the rules of procedure recognize that a Participating Territory would need to meet a predetermined standard in order to exercise or acquire the right to vote in the WCPF Commission and that such standards, as well as the process for judging whether they have been met, will require further discussion and elaboration by the Contracting Parties.

For its part, the United States has begun to undertake consultations with representatives of American Samoa, Guam and the Northern Mariana Islands with respect to their participation in the work of the WCPF Commission as Participating Territories should the United States become a Contracting Party to the WCPF Convention.

Article 44 designates the Government of New Zealand as the depositary of the WCPF Convention.

The WCPF Convention is consistent with and, in fact, promotes the objectives of U.S. domestic fisheries legislation, including the

Magnuson-Stevens Fishery Conservation and Management Act, as amended, (16 U.S.C. 1801 *et seq.*). At the same time, in order for the United States to implement the WCPF Convention fully, legislation will be required, *inter alia*, to provide for the organization of U.S. participation in the WCPF Commission and to make conservation and management measures adopted by the WCPF Commission legally binding upon nationals and vessels subject to U.S. jurisdiction.

As is evident in this Report, the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean creates legal obligations and cooperative mechanisms necessary for the long-term conservation and sustainable use of fishery resources of worldwide importance. It offers the opportunity to meet these objectives before the resources become subject to the pressures of overfishing that are so evident elsewhere in the world's oceans—though the signs of such pressures are already on the Western and Central Pacific horizon. The United States has direct and important interests in this Convention and its early and effective implementation. The U.S. tuna industry, long a major and responsible player in the region, and U.S. citizens, particularly our Pacific island residents, have basic stakes in the health of the oceans and their resources as promoted by this Convention.

Accordingly, I recommend that this Convention be transmitted to the Senate as soon as possible for its early and favorable consideration.

Respectfully submitted,

COLIN L. POWELL.

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN

The Contracting Parties to this Convention,

Determined to ensure the long-term conservation and sustainable use, in particular for human food consumption, of highly migratory fish stocks in the western and central Pacific Ocean for present and future generations,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Recognizing that, under the 1982 Convention and the Agreement, coastal States and States fishing in the region shall cooperate with a view to ensuring conservation and promoting the objective of optimum utilization of highly migratory fish stocks throughout their range,

Mindful that effective conservation and management measures require the application of the precautionary approach and the best scientific information available,

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

Recognizing the ecological and geographical vulnerability of the small island developing States, territories and possessions in the region, their economic and social dependence on highly migratory fish stocks, and their need for specific assistance, including financial, scientific and technological assistance, to allow them to participate effectively in the conservation, management and sustainable use of the highly migratory fish stocks,

Further recognizing that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,

Acknowledging that compatible, effective and binding conservation and management measures can be achieved only through cooperation between coastal States and States fishing in the region,

Convinced that effective conservation and management of the highly migratory fish stocks of the western and central Pacific Ocean in their entirety may best be achieved through the establishment of a regional Commission,

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Convention:

(a) "1982 Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "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;

(c) "Commission" means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention;

(d) "fishing" means:

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transhipment;

(vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel;

(e) "fishing vessel" means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations;

(f) "highly migratory fish stocks" means all fish stocks of the species listed in Annex 1 of the 1982 Convention occurring in the Convention Area, and such other species of fish as the Commission may determine;

(g) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over

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

(h) "transhipment" means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

Article 2

Objective

The objective of this Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 Convention and the Agreement.

Article 3

Area of application

1. Subject to article 4, the area of competence of the Commission (hereinafter referred to as "the Convention Area") comprises all waters of the Pacific Ocean bounded to the south and to the east by the following line:

From the south coast of Australia due south along the 141° meridian of east longitude to its intersection with the 55° parallel of south latitude; thence due east along the 55° parallel of south latitude to its intersection with the 150° meridian of east longitude; thence due south along the 150° meridian of east longitude to its intersection with the 60° parallel of south latitude; thence due east along the 60° parallel of south latitude to its intersection with the 130° meridian of west longitude; thence due north along the 130° meridian of west longitude to its intersection with the 4° parallel of south latitude; thence due west along the 4° parallel of south latitude to its intersection with the 150° meridian of west longitude; thence due north along the 150° meridian of west longitude.

2. Nothing in this Convention shall constitute recognition of the claims or positions of any of the members of the Commission concerning the legal status and extent of waters and zones claimed by any such members.

3. This Convention applies to all stocks of highly migratory fish within the Convention Area except sauries. Conservation and management measures under this Convention shall be applied throughout the range of the stocks, or to specific areas within the Convention Area, as determined by the Commission.

Article 4

Relationship between this Convention and the 1982 Convention

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the 1982 Convention and the Agreement. This Convention shall be interpreted and applied in the context of and in a manner consistent with the 1982 Convention and the Agreement.

PART II

CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS

Article 5

Principles and measures for conservation and management

In order to conserve and manage highly migratory fish stocks in the Convention Area in their entirety, the members of the Commission shall, in giving effect to their duty to cooperate in accordance with the 1982 Convention, the Agreement and this Convention:

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

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

(c) apply the precautionary approach in accordance with this Convention and all relevant internationally agreed standards and recommended practices and procedures;

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

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

(f) protect biodiversity in the marine environment;

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

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

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

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

Article 6

Application of the precautionary approach

1. In applying the precautionary approach, the members of the Commission shall:

(a) apply the guidelines set out in Annex II of the Agreement, which shall form an integral part of this Convention, and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

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

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

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

3. Members of the Commission shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event they are exceeded, members of the Commission shall, without delay, take the action determined under paragraph 1(a) to restore the stocks.

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

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

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

Article 7

Implementation of principles in areas under national jurisdiction

1. The principles and measures for conservation and management enumerated in article 5 shall be applied by coastal States within areas under national jurisdiction in the Convention Area in the exercise of their sovereign rights for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks.

2. The members of the Commission shall give due consideration to the respective capacities of developing coastal States, in particular small island developing States, in the Convention Area to apply the provisions of articles 5 and 6 within areas under national jurisdiction and their need for assistance as provided for in this Convention.

Article 8

Compatibility of conservation and management measures

1. 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 highly migratory fish stocks in their entirety. To this end, the members of the Commission have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.

2. In establishing compatible conservation and management measures for highly migratory fish stocks in the Convention Area, the Commission shall:

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

(b) take into account:

(i) the conservation and management measures adopted and applied in accordance with article 61 of the 1982 Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the Convention Area as a whole do not undermine the effectiveness of such measures;

(ii) previously agreed measures established and applied in respect of the same stocks for the high seas which form part of the Convention Area by relevant coastal States and States fishing on the high seas in accordance with the 1982 Convention and the Agreement;

(c) take into account previously agreed measures established and applied in accordance with the 1982 Convention and the Agreement in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

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

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

3. The coastal State shall ensure that the measures adopted and applied by it to highly migratory fish stocks within areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same stocks.

4. Where there are areas of high seas in the Convention Area entirely surrounded by the exclusive economic zones of members of the Commission, the Commission shall, in giving effect to this article, pay special attention to ensuring compatibility between conservation and management measures established for such high seas areas and those established in respect of the same stocks in accordance with article 61 of the 1982 Convention by the surrounding coastal States in areas under national jurisdiction.

PART III

COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN

SECTION 1. GENERAL PROVISIONS

Article 9

Establishment of the Commission

1. There is hereby established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which shall function in accordance with the provisions of this Convention.

2. A fishing entity referred to in the Agreement, which has agreed to be bound by the regime established by this Convention in accordance with the provisions of Annex I, may participate in the work, including decision-making, of the Commission in accordance with the provisions of this article and Annex I.

3. The Commission shall hold an annual meeting. The Commission shall hold such other meetings as may be necessary to carry out its functions under this Convention.

4. The Commission shall elect a chairman and a vice-chairman from among the Contracting Parties, who shall be of different nationalities. They shall be elected for a period of two years and shall be eligible for re-election. The chairman and vice-chairman shall remain in office until the election of their successors.

5. The principle of cost-effectiveness shall apply to the frequency, duration and scheduling of meetings of the Commission and its subsidiary bodies. The Commission may, where appropriate, enter into contractual arrangements with relevant institutions to provide expert services necessary for the efficient functioning of the Commission and to enable it to carry out effectively its responsibilities under this Convention.

6. The Commission shall have international legal personality and such legal capacity as may be necessary to perform its functions and achieve its objectives. The privileges and immunities which the Commission and its officers shall enjoy in the territory of a Contracting Party shall be determined by agreement between the Commission and the member concerned.

7. The Contracting Parties shall determine the location of the headquarters of the Commission and shall appoint its Executive Director.

8. The Commission shall adopt, and amend as required, by consensus, rules of procedure for the conduct of its meetings, including meetings of its subsidiary bodies, and for the efficient exercise of its functions.

Article 10

Functions of the Commission

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks within areas under national jurisdiction, the functions of the Commission shall be to:

(a) determine the total allowable catch or total level of fishing effort within the Convention Area for such highly migratory fish stocks as the Commission may decide and adopt such other conservation and management measures and recommendations as may be necessary to ensure the long-term sustainability of such stocks;

(b) promote cooperation and coordination between members of the Commission to ensure that conservation and management measures for highly migratory fish stocks in areas under national jurisdiction and measures for the same stocks on the high seas are compatible;

(c) adopt, where necessary, conservation and management measures and recommendations for non-target species and species dependent on or associated with the

target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(d) adopt standards for collection, verification and for the timely exchange and reporting of data on fisheries for highly migratory fish stocks in the Convention Area in accordance with Annex I of the Agreement, which shall form an integral part of this Convention;

(e) compile and disseminate accurate and complete statistical data to ensure that the best scientific information is available, while maintaining confidentiality, where appropriate;

(f) obtain and evaluate scientific advice, review the status of stocks, promote the conduct of relevant scientific research and disseminate the results thereof;

(g) develop, where necessary, criteria for the allocation of the total allowable catch or the total level of fishing effort for highly migratory fish stocks in the Convention Area;

(h) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;

(i) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system;

(j) obtain and evaluate economic and other fisheries-related data and information relevant to the work of the Commission;

(k) agree on means by which the fishing interests of any new member of the Commission may be accommodated;

(l) adopt its rules of procedure and financial regulations and such other internal administrative regulations as may be necessary to carry out its functions;

(m) consider and approve the proposed budget of the Commission;

(n) promote the peaceful settlement of disputes; and

(o) discuss any question or matter within the competence of the Commission and adopt any measures or recommendations necessary for achieving the objective of this Convention.

2. In giving effect to paragraph 1, the Commission may adopt measures relating to, inter alia:

(a) the quantity of any species or stocks which may be caught;

(b) the level of fishing effort;

(c) limitations of fishing capacity, including measures relating to fishing vessel numbers, types and sizes;

(d) the areas and periods in which fishing may occur;

(e) the size of fish of any species which may be taken;

(f) the fishing gear and technology which may be used; and

(g) particular subregions or regions.

3. In developing criteria for allocation of the total allowable catch or the total level of fishing effort the Commission shall take into account, inter alia:

(a) the status of the stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, past and present fishing patterns and fishing practices of participants in the fishery and the extent of the catch being utilized for domestic consumption;

(c) the historic catch in an area;

(d) the needs of small island developing States, and territories and possessions, in the Convention Area whose economies, food supplies and livelihoods are overwhelmingly dependent on the exploitation of marine living resources;

(e) the respective contributions of participants to conservation and management of the stocks, including the provision by them of accurate data and their contribution to the conduct of scientific research in the Convention Area;

(f) the record of compliance by the participants with conservation and management measures;

(g) the needs of coastal communities which are dependent mainly on fishing for the stocks;

(h) the special circumstances of a State which is surrounded by the exclusive economic zones of other States and has a limited exclusive economic zone of its own;

(i) the geographical situation of a small island developing State which is made up of non-contiguous groups of islands having a distinct economic and cultural identity of their own but which are separated by areas of high seas;

(j) the fishing interests and aspirations of coastal States, particularly small island developing States, and territories and possessions, in whose areas of national jurisdiction the stocks also occur.

4. The Commission may adopt decisions relating to the allocation of the total allowable catch or the total level of fishing effort. Such decisions, including decisions relating to the exclusion of vessel types, shall be taken by consensus.

5. The Commission shall take into account the reports and any recommendations of the Scientific Committee and the Technical and Compliance Committee on matters within their respective areas of competence.

6. The Commission shall promptly notify all members of the measures and recommendations decided upon by the Commission and shall give due publicity to the conservation and management measures adopted by it.

Article 11

Subsidiary bodies of the Commission

1. There are hereby established as subsidiary bodies to the Commission a Scientific Committee and a Technical and Compliance Committee to provide advice and recommendations to the Commission on matters within their respective areas of competence.

2. Each member of the Commission shall be entitled to appoint one representative to each Committee who may be accompanied by other experts and advisers. Such representatives shall have appropriate qualifications or relevant experience in the area of competence of the Committee.

3. Each Committee shall meet as often as is required for the efficient exercise of its functions, provided that each Committee shall, in any event, meet prior to the annual meeting of the Commission and shall report to the annual meeting the results of its deliberations.

4. Each Committee shall make every effort to adopt its reports by consensus. If every effort to achieve consensus has failed, the report shall indicate the majority and minority views and may include the differing views of the representatives of the members on all or any part of the report.

5. In the exercise of their functions, each Committee may, where appropriate, consult any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation and may seek expert advice as required on an ad hoc basis.

6. The Commission may establish such other subsidiary bodies as it deems necessary for the exercise of its functions, including working groups for the purpose of examining technical issues relating to particular species or stocks and reporting thereon to the Commission.

7. The Commission shall establish a committee to make recommendations on the implementation of such conservation and management measures as may be adopted by the Commission for the area north of the 20° parallel of north latitude and on the formulation of such measures in respect of stocks which occur mostly in this area. The committee shall include the members situated in such area and those fishing in the area. Any member of the Commission not represented on the committee may send a representative to participate in the deliberations of the committee as an observer. Any extraordinary cost incurred for the work of the committee shall be borne by the members of the committee. The committee shall adopt recommendations to the Commission by consensus. In adopting measures in relation to particular stocks and species in such area,

the decision of the Commission shall be based on any recommendations of the committee. Such recommendations shall be consistent with the general policies and measures adopted by the Commission in respect of the stocks or species in question and with the principles and measures for conservation and management set out in this Convention. If the Commission, in accordance with the rules of procedure for decision-making on matters of substance, does not accept the recommendation of the committee on any matter, it shall return the matter to the committee for further consideration. The committee shall reconsider the matter in the light of the views expressed by the Commission.

SECTION 2. SCIENTIFIC INFORMATION AND ADVICE

Article 12

Functions of the Scientific Committee

1. The Scientific Committee is established to ensure that the Commission obtains for its consideration the best scientific information available.

2. The functions of the Committee shall be to:

(a) recommend to the Commission a research plan, including specific issues and items to be addressed by the scientific experts or by other organizations or individuals, as appropriate, and identify data needs and coordinate activities that meet those needs;

(b) review the assessments, analyses, other work and recommendations prepared for the Commission by the scientific experts prior to consideration of such recommendations by the Commission and provide information, advice and comments thereon, as necessary;

(c) encourage and promote cooperation in scientific research, taking into account the provisions of article 246 of the 1982 Convention, in order to improve information on highly migratory fish stocks, non-target species, and species belonging to the same ecosystem or associated with or dependent upon such stocks in the Convention Area;

(d) review the results of research and analyses of target stocks or non-target or associated or dependent species in the Convention Area;

(e) report to the Commission its findings or conclusions on the status of target stocks or non-target or associated or dependent species in the Convention Area;

(f) in consultation with the Technical and Compliance Committee, recommend to the Commission the priorities and objectives of the regional observer programme and assess the results of that programme;

(g) make reports and recommendations to the Commission as directed, or on its own initiative, on matters concerning the conservation and management of and

research on target stocks or non-target or associated or dependent species in the Convention Area; and

(h) perform such other functions and tasks as may be requested by or assigned to it by the Commission.

3. The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.

4. The representatives of the Oceanic Fisheries Programme of the Pacific Community and the Inter-American Tropical Tuna Commission, or their successor organizations, shall be invited to participate in the work of the Committee. The Committee may also invite other organizations or individuals with scientific expertise in matters related to the work of the Commission to participate in its meetings.

Article 13

Scientific services

1. The Commission, taking into account any recommendation of the Scientific Committee, may engage the services of scientific experts to provide information and advice on the fishery resources covered by this Convention and related matters that may be relevant to the conservation and management of those resources. The Commission may enter into administrative and financial arrangements to utilize scientific services for this purpose. In this regard, and in order to carry out its functions in a cost-effective manner, the Commission shall, to the greatest extent possible, utilize the services of existing regional organizations and shall consult, as appropriate, with any other fisheries management, technical or scientific organization with expertise in matters related to the work of the Commission.

2. The scientific experts may, as directed by the Commission:

(a) conduct scientific research and analyses in support of the work of the Commission;

(b) develop and recommend to the Commission and the Scientific Committee stock-specific reference points for the species of principal interest to the Commission;

(c) assess the status of stocks against the reference points established by the Commission;

(d) provide the Commission and the Scientific Committee with reports on the results of their scientific work, advice and recommendations in support of the formulation of conservation and management measures and other relevant matters; and

(e) perform such other functions and tasks as may be required.

3. In carrying out their work, the scientific experts may:

(a) undertake the collection, compilation and dissemination of fisheries data according to agreed principles and procedures established by the Commission, including procedures and policies relating to the confidentiality, disclosure and publication of data;

(b) conduct assessments of highly migratory fish stocks, non-target species, and species belonging to the same ecosystem or associated with or dependent upon such stocks, within the Convention Area;

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

(d) assess the potential effects of proposed changes in the methods or levels of fishing and of proposed conservation and management measures; and

(e) investigate such other scientific matters as may be referred to them by the Commission.

4. The Commission may make appropriate arrangements for periodic peer review of scientific information and advice provided to the Commission by the scientific experts.

5. The reports and recommendations of the scientific experts shall be provided to the Scientific Committee and to the Commission.

SECTION 3. THE TECHNICAL AND COMPLIANCE COMMITTEE

Article 14

Functions of the Technical and Compliance Committee

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

(a) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;

(b) monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary; and

(c) review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission and make such recommendations to the Commission as may be necessary.

2. In carrying out its functions, the Committee shall:

(a) provide a forum for exchange of information concerning the means by which they are applying the conservation and management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction;

(b) receive reports from each member of the Commission relating to measures taken to monitor, investigate and penalize violations of provisions of this Convention and measures adopted pursuant thereto;

(c) in consultation with the Scientific Committee, recommend to the Commission the priorities and objectives of the regional observer programme, when established, and assess the results of that programme;

(d) consider and investigate such other matters as may be referred to it by the Commission, including developing and reviewing measures to provide for the verification and validation of fisheries data;

(e) make recommendations to the Commission on technical matters such as fishing vessel and gear markings;

(f) in consultation with the Scientific Committee, make recommendations to the Commission on the fishing gear and technology which may be used;

(g) report to the Commission its findings or conclusions on the extent of compliance with conservation and management measures; and

(h) make recommendations to the Commission on matters relating to monitoring, control, surveillance and enforcement.

3. The Committee may establish, with the approval of the Commission, such subsidiary bodies as may be necessary for the performance of its functions.

4. The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.

SECTION 4. THE SECRETARIAT

Article 15

The Secretariat

1. The Commission may establish a permanent Secretariat consisting of an Executive Director and such other staff as the Commission may require.

2. The Executive Director shall be appointed for a term of four years and may be re-appointed for a further term of four years.

3. The Executive Director shall be the chief administrative officer of the Commission, and shall act in that capacity in all the meetings of the Commission and of any subsidiary body, and shall perform such other administrative functions as are entrusted to the Executive Director by the Commission.

4. The Secretariat functions shall include the following:

(a) receiving and transmitting the Commission's official communications;

(b) facilitating the compilation and dissemination of data necessary to accomplish the objective of this Convention;

(c) preparing administrative and other reports for the Commission and the Scientific and Technical and Compliance Committees;

(d) administering agreed arrangements for monitoring, control and surveillance and the provision of scientific advice;

(e) publishing the decisions of and promoting the activities of the Commission and its subsidiary bodies; and

(f) treasury, personnel and other administrative functions.

5. In order to minimize costs to the members of the Commission, 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.

Article 16

The staff of the Commission

1. The staff of the Commission shall consist of such qualified scientific and technical and other personnel as may be required to fulfil the functions of the Commission. The staff shall be appointed by the Executive Director.

2. The paramount consideration in the recruitment and employment of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable basis between the members of the Commission with a view to ensuring a broad-based Secretariat.

SECTION 5. FINANCIAL ARRANGEMENTS OF THE COMMISSION

Article 17

Funds of the Commission

1. The funds of the Commission shall include:

(a) assessed contributions in accordance with article 18, paragraph 2;

(b) voluntary contributions;

(c) the fund referred to in article 30, paragraph 3; and

(d) any other funds which the Commission may receive.

2. The Commission shall adopt, and amend as required, by consensus, financial regulations for the administration of the Commission and for the exercise of its functions.

Article 18

Budget of the Commission

1. The Executive Director shall draft the proposed budget of the Commission and submit it to the Commission. The proposed budget shall indicate which of the administrative expenses of the Commission are to be financed from the assessed contributions referred to in article 17, paragraph 1 (a), and which such expenses are to be financed from funds received pursuant to article 17, paragraphs 1 (b), (c) and (d). The

Commission shall adopt the budget by consensus. If the Commission is unable to adopt a decision on the 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.

2. The amount of the contribution to the budget shall be determined in accordance with a scheme which the Commission shall adopt, and amend as required, by consensus. In adopting the scheme, due consideration shall be given to each member being assessed an equal basic fee, a fee based upon national wealth, reflecting the state of development of the member concerned and its ability to pay, and a variable fee. The variable fee shall be based, inter alia, on the total catch taken within exclusive economic zones and in areas beyond national jurisdiction in the Convention Area of such species as may be specified by the Commission, provided that a discount factor shall be applied to the catch taken in the exclusive economic zone of a member of the Commission which is a developing State or territory by vessels flying the flag of that member. The scheme adopted by the Commission shall be set out in the financial regulations of the Commission.

3. If a contributor is in arrears in the payment of its financial contributions to the Commission it shall not participate in the taking of decisions by the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. Interest shall be payable on such unpaid contributions at such rate as may be determined by the Commission in its financial regulations. The Commission may, nevertheless, waive such interest payments and permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

Article 19

Annual audit

The records, books and accounts of the Commission, including its annual financial statement, shall be audited annually by an independent auditor appointed by the Commission.

SECTION 6. DECISION-MAKING

Article 20

Decision-making

1. As a general rule, decision-making in the Commission shall be by consensus. For the purposes 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 made by consensus, if all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure shall be taken by a majority of those

present and voting. Decisions on questions of substance shall be taken by a three-fourths majority of those present and voting provided that such majority includes a three-fourths majority of the members of the South Pacific Forum Fisheries Agency present and voting and a three-fourths majority of non-members of the South Pacific Forum Fisheries Agency present and voting and provided further that in no circumstances shall a proposal be defeated by two or fewer votes in either chamber. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Commission by consensus or by the majority required for decisions on questions of substance.

3. If it appears to the Chairman that all efforts to reach a decision by consensus have been exhausted, the Chairman shall fix a time during that session of the Commission for taking the decision by a vote. At the request of any representative, the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same session as the Commission may decide. At that time, the Commission shall take a vote on the deferred question. This rule may be applied only once to any question.

4. Where this Convention expressly provides that a decision on a proposal shall be taken by consensus and the Chairman determines that there would be an objection to such proposal, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.

5. Subject to paragraphs 6 and 7, a decision adopted by the Commission shall become binding 60 days after the date of its adoption.

6. A member which has voted against a decision or which was absent during the meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel constituted in accordance with the procedures set out in Annex II to this Convention on the grounds that:

(a) the decision is inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention; or

(b) the decision unjustifiably discriminates in form or in fact against the member concerned.

7. Pending the findings and recommendations of the review panel and any action required by the Commission, no member of the Commission shall be required to give effect to the decision in question.

8. If the review panel finds that the decision of the Commission need not be modified, amended or revoked, the decision shall become binding 30 days from the date of communication by the Executive Director of the findings and recommendations of the review panel.

9. If the review panel recommends to the Commission that the decision be modified, amended or revoked, the Commission shall, at its next annual meeting, modify or amend its decision in order to conform with the findings and recommendations of the review panel or it may decide to revoke the decision, provided that, if so requested in writing by a majority of the members, a special meeting of the Commission shall be convened within 60 days of the date of communication of the findings and recommendations of the review panel.

SECTION 7. TRANSPARENCY AND COOPERATION WITH OTHER ORGANIZATIONS

Article 21

Transparency

The Commission shall promote transparency in its decision-making processes and other activities. Representatives from intergovernmental organizations and non-governmental organizations concerned with matters relevant to the implementation of this Convention shall be afforded the opportunity to participate in the meetings of the Commission and its subsidiary bodies as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation. The procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall be given timely access to pertinent information subject to the rules and procedures which the Commission may adopt.

Article 22

Cooperation with other organizations

1. The Commission shall cooperate, as appropriate, with the Food and Agriculture Organization of the United Nations and with other specialized agencies and bodies of the United Nations on matters of mutual interest.

2. The Commission shall make suitable arrangements for consultation, cooperation and collaboration with other relevant intergovernmental organizations, particularly those which have related objectives and which can contribute to the attainment of the objective of this Convention, such as the Commission for the Conservation of Antarctic Marine Living Resources, the Commission for the Conservation of Southern Bluefin Tuna, the Indian Ocean Tuna Commission and the Inter-American Tropical Tuna Commission.

3. Where the Convention Area overlaps with an area under regulation by another fisheries management organization, the Commission shall cooperate with such other organization in order to avoid the duplication of measures in respect of species in that area which are regulated by both organizations.

4. The Commission shall cooperate with the Inter-American Tropical Tuna Commission to ensure that the objective set out in article 2 of this Convention is reached. To that end, the Commission shall initiate consultation with the Inter-American Tropical

Tuna Commission with a view to reaching agreement on a consistent set of conservation and management measures, including measures relating to monitoring, control and surveillance, for fish stocks that occur in the Convention Areas of both organizations.

5. The Commission may enter into relationship agreements with the organizations referred to in this article and with other organizations as may be appropriate, such as the Pacific Community and the South Pacific Forum Fisheries Agency, with a view to obtaining the best available scientific and other fisheries-related information to further the attainment of the objective of this Convention and to minimize duplication with respect to their work.

6. Any organization with which the Commission has entered into an arrangement or agreement under paragraphs 1, 2 and 5 may designate representatives to attend meetings of the Commission as observers in accordance with the rules of procedure of the Commission. Procedures shall be established for obtaining the views of such organizations in appropriate cases.

PART IV
OBLIGATIONS OF MEMBERS OF THE COMMISSION

Article 23
Obligations of members of the Commission

1. Each member of the Commission shall promptly implement the provisions of this Convention and any conservation, management and other measures or matters which may be agreed pursuant to this Convention from time to time and shall cooperate in furthering the objective of this Convention.

2. Each member of the Commission shall:

(a) provide annually to the Commission statistical, biological and other data and information in accordance with Annex I of the Agreement and, in addition, such data and information as the Commission may require;

(b) provide to the Commission in the manner and at such intervals as may be required by the Commission, information concerning its fishing activities in the Convention Area, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics; and

(c) provide to the Commission at such intervals as may be required information on steps taken to implement the conservation and management measures adopted by the Commission.

3. The members of the Commission shall keep the Commission informed of the measures they have adopted for the conservation and management of highly migratory fish stocks in areas within the Convention Area under their national jurisdiction. The Commission shall circulate periodically such information to all members.

4. Each member of the Commission shall keep the Commission informed of the measures it has adopted for regulating the activities of fishing vessels flying its flag which fish in the Convention Area. The Commission shall circulate periodically such information to all members.

5. Each member of the Commission shall, to the greatest extent possible, take measures to ensure that its nationals, and fishing vessels owned or controlled by its nationals fishing in the Convention Area, comply with the provisions of this Convention. To this end, members of the Commission may enter into agreements with States whose flags such vessels are flying to facilitate such enforcement. Each member of the Commission shall, to the greatest extent possible, at the request of any other member, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of this Convention or any conservation and management measure adopted by the Commission. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the member making the request and to the Commission as soon as practicable and in any case within two months of such request and a report on the outcome of the investigation shall be provided when the investigation is completed.

PART V
DUTIES OF THE FLAG STATE

Article 24
Flag State duties

1. Each member of the Commission shall take such measures as may be necessary to ensure that:

(a) fishing vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures; and

(b) fishing vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of any Contracting Party.

2. No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing for highly migratory fish stocks in the Convention Area beyond areas of national jurisdiction unless it has been authorized to do so by the appropriate authority or authorities of that member. A member of the Commission shall authorize the use of vessels flying its flag for fishing in the Convention Area beyond areas of national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under the 1982 Convention, the Agreement and this Convention.

3. It shall be a condition of every authorization issued by a member of the Commission that the fishing vessel in respect of which the authorization is issued:

(a) conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any licence, permit or authorization that may be required by such other State; and

(b) is operated on the high seas in the Convention Area in accordance with the requirements of Annex III, the requirements of which shall also be established as a general obligation of all vessels operating pursuant to this Convention.

4. Each member of the Commission shall, for the purposes of effective implementation of this Convention, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing in the Convention Area beyond its area of national jurisdiction, and shall ensure that all such fishing vessels are entered in that record.

5. Each member of the Commission shall provide annually to the Commission, in accordance with such procedures as may be agreed by the Commission, the information set out in Annex IV to this Convention with respect to each fishing vessel entered in the record required to be maintained under paragraph 4 and shall promptly notify the Commission of any modifications to such information.

6. Each member of the Commission shall also promptly inform the Commission of:

(a) any additions to the record;

(b) any deletions from the record by reason of:

(i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;

(ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 2;

(iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;

(iv) the scrapping, decommissioning or loss of the fishing vessel concerned; and

(v) any other reason,

specifying which of the reasons listed above is applicable.

7. The Commission shall maintain its own record, based on the information provided to it pursuant to paragraphs 5 and 6, of fishing vessels referred to in paragraph 4. The Commission shall circulate periodically the information contained in such record to all members of the Commission, and, on request, individually to any member.

8. Each member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas. The standards, specifications and procedures for the use of such transmitters shall be established by the Commission, which shall operate a vessel monitoring system for all vessels that fish for highly migratory fish stocks on the high seas in the Convention Area. In establishing such standards, specifications and procedures, the Commission shall take into account the characteristics of traditional fishing vessels from developing States. The Commission, directly, and simultaneously with the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information from the vessel monitoring system in accordance with the procedures adopted by the Commission. The procedures adopted by the Commission shall include appropriate measures to protect the confidentiality of information received through the vessel monitoring system. Any member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system.

9. Each member of the Commission shall require its fishing vessels that fish in the Convention Area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures to be determined by the coastal State.

10. The members of the Commission shall cooperate to ensure compatibility between national and high seas vessel monitoring systems.

PART VI
COMPLIANCE AND ENFORCEMENT

Article 25
Compliance and enforcement

1. Each member of the Commission shall enforce the provisions of this Convention and any conservation and management measures issued by the Commission.

2. Each member of the Commission shall, at the request of any other member, and when provided with the relevant information, investigate fully 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. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the member making the request and to the Commission as soon as practicable and in any case within two months of such request and a report on the outcome of the investigation shall be provided when the investigation is completed.

3. Each member of the Commission shall, if satisfied that sufficient evidence is available in respect of an alleged violation by a fishing vessel flying its flag, refer the

case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned.

4. Each member of the Commission shall ensure 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 such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. Where the vessel concerned has conducted unauthorized fishing within areas under the national jurisdiction of any coastal State Party to this Convention, the flag State shall, in accordance with its laws, ensure that the vessel complies promptly with any sanctions which may be imposed by such coastal State in accordance with its national laws and regulations or shall impose appropriate sanctions in accordance with paragraph 7. For the purposes of this article, a serious violation shall include any of the violations specified in article 21, paragraphs 11 (a) to (h) of the Agreement and such other violations as may be determined by the Commission.

5. Each member of the Commission shall, to the extent permitted by its national laws and regulations, establish arrangements for making available to prosecuting authorities of other members evidence relating to alleged violations.

6. Where there are reasonable grounds for believing that a fishing vessel on the high seas has engaged in unauthorized fishing within an area under the national jurisdiction of a member of the Commission, the flag State of that vessel, at the request of the member concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the member concerned in taking appropriate enforcement action in such cases and may authorize the relevant authorities of such member to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the 1982 Convention.

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

8. Each member shall transmit to the Commission an annual statement of compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this article.

9. The provisions of this article are without prejudice to:

(a) the rights of any of the members of the Commission in accordance with their national laws and regulations relating to fisheries, including the right to impose appropriate sanctions on the vessel concerned in respect of violations occurring within areas under national jurisdiction in accordance with such national laws and regulations; and

(b) the rights of any of the members of the Commission in relation to any provision relating to compliance and enforcement contained in any relevant bilateral or multilateral fisheries access agreement not inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention.

10. Each member of the Commission, where it has reasonable grounds for believing that a fishing vessel flying the flag of another State has engaged in any activity that undermines the effectiveness of conservation and management measures adopted for the Convention Area, shall draw this to the attention of the flag State concerned and may, as appropriate, draw the matter to the attention of the Commission. To the extent permitted by its national laws and regulations it shall provide the flag State with full supporting evidence and may provide the Commission with a summary of such evidence. The Commission shall not circulate such information until such time as the flag State has had an opportunity to comment, within a reasonable time, on the allegation and evidence submitted, or to object as the case may be.

11. The members of the Commission may take action in accordance with the Agreement and international law, including through procedures adopted by the Commission for this purpose, to deter fishing vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures adopted by the Commission from fishing in the Convention Area until such time as appropriate action is taken by the flag State.

12. The Commission, when necessary, shall develop procedures which allow for non-discriminatory trade measures to be taken, consistent with the international obligations of the members of the Commission, on any species regulated by the Commission, against any State or entity whose fishing vessels fish in a manner which undermines the effectiveness of the conservation and management measures adopted by the Commission.

Article 26

Boarding and inspection

1. For the purposes of ensuring compliance with conservation and management measures, the Commission shall establish procedures for boarding and inspection of fishing vessels on the high seas in the Convention Area. All vessels used for boarding and inspection of fishing vessels on the high seas in the Convention Area shall be clearly marked and identifiable as being on government service and authorized to undertake high seas boarding and inspection in accordance with this Convention.

2. If, within two years of the entry into force of this Convention, the Commission is not able to agree on such procedures, or on an alternative mechanism which effectively discharges the obligations of the members of the Commission under the Agreement and this Convention to ensure compliance with the conservation and management measures established by the Commission, articles 21 and 22 of the Agreement shall be applied, subject to paragraph 3, as if they were part of this Convention and boarding and inspection of fishing vessels in the Convention Area, as well as any subsequent enforcement action, shall be conducted in accordance with the procedures set out therein and such additional practical procedures as the Commission may decide are necessary for the implementation of articles 21 and 22 of the Agreement.

3. Each member of the Commission shall ensure that fishing vessels flying its flag accept boarding by duly authorized inspectors in accordance with such procedures. Such duly authorized inspectors shall comply with the procedures for boarding and inspection.

Article 27

Measures taken by a port State

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

2. Whenever a fishing vessel of a member of the Commission voluntarily enters a port or offshore terminal of another member, the port State may, inter alia, inspect documents, fishing gear and catch on board such fishing vessel.

3. Members of the Commission may adopt regulations empowering the relevant national authorities to prohibit landings and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission.

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

PART VII

REGIONAL OBSERVER PROGRAMME AND REGULATION OF TRANSHIPMENT

Article 28

Regional observer programme

1. The Commission shall develop a regional observer programme to collect verified catch data, other scientific data and additional information related to the fishery from the Convention Area and to monitor the implementation of the conservation and management measures adopted by the Commission.

2. The observer programme shall be coordinated by the Secretariat of the Commission, and shall be organized in a flexible manner which takes into account the nature of the fishery and other relevant factors. In this regard, the Commission may enter into contracts for the provision of the regional observer programme.

3. The regional observer programme shall consist of independent and impartial observers authorized by the Secretariat of the Commission. The programme should be coordinated, to the maximum extent possible, with other regional, subregional and national observer programmes.

4. Each member of the Commission shall ensure that fishing vessels flying its flag in the Convention Area, except for vessels that operate exclusively within waters under the national jurisdiction of the flag State, are prepared to accept an observer from the regional observer programme, if required by the Commission.

5. The provisions of paragraph 4 shall apply to vessels fishing exclusively on the high seas in the Convention Area, vessels fishing on the high seas and in waters under the jurisdiction of one or more coastal States, and vessels fishing in waters under the jurisdiction of two or more coastal States. When a vessel is operating on the same fishing trip both in waters under the national jurisdiction of its flag State and in the adjacent high seas, an observer placed under the regional observer programme shall not undertake any of the activities specified in paragraph 6 (e) when the vessel is in waters under the national jurisdiction of its flag State, unless the flag State of the vessel agrees otherwise.

6. The regional observer programme shall operate in accordance with the following guidelines and under the conditions set out in article 3 of Annex III of this Convention:

(a) the programme shall provide a sufficient level of coverage to ensure that the Commission receives appropriate data and information on catch levels and related matters within the Convention Area, taking into account the characteristics of the fisheries;

(b) each member of the Commission shall be entitled to have its nationals included in the programme as observers;

(c) observers shall be trained and certified in accordance with uniform procedures to be approved by the Commission;

(d) observers shall not unduly interfere with the lawful operations of the vessel and, in carrying out their functions, they shall give due consideration to the operational requirements of the vessel and shall communicate regularly with the captain or master for this purpose;

(e) the activities of observers shall include collecting catch data and other scientific data, monitoring the implementation of conservation and management measures adopted by the Commission and reporting of their findings in accordance with procedures to be developed by the Commission;

(f) the programme shall be cost effective, shall avoid duplication with existing regional, subregional and national observer programmes, and shall, to the extent practicable, seek to minimize disruption to the operations of vessels fishing in the Convention Area;

(g) a reasonable period of notice of the placement of an observer shall be given.

7. The Commission shall develop further procedures and guidelines for the operation of the regional observer programme, including:

(a) to ensure the security of non-aggregated data and other information which the Commission deems to be of a confidential nature;

(b) for the dissemination of data and information collected by observers to the members of the Commission;

(c) for boarding of observers which clearly define the rights and responsibilities of the captain or master of the vessel and the crew when an observer is on board a vessel, as well as the rights and responsibilities of observers in the performance of their duties.

8. The Commission shall determine the manner in which the costs of the observer programme would be defrayed.

Article 29

Transhipment

1. In order to support efforts to ensure accurate reporting of catches, the members of the Commission shall encourage their fishing vessels, to the extent practicable, to conduct transhipment in port. A member may designate one or more of its ports as transhipment ports for the purposes of this Convention, and the Commission shall circulate periodically to all members a list of such designated ports.

2. Transhipment at a port or in an area within waters under the national jurisdiction of a member of the Commission shall take place in accordance with applicable national laws.

3. The Commission shall develop procedures to obtain and verify data on the quantity and species transhipped both in port and at sea in the Convention Area and procedures to determine when transhipment covered by this Convention has been completed.

4. Transhipment at sea in the Convention Area beyond areas under national jurisdiction shall take place only in accordance with the terms and conditions set out in article 4 of Annex III to this Convention, and any procedures established by the Commission pursuant to paragraph 3 of this article. Such procedures shall take into account the characteristics of the fishery concerned.

5. Notwithstanding paragraph 4 above, and subject to specific exemptions which the Commission adopts in order to reflect existing operations, transhipment at sea by purse-seine vessels operating within the Convention Area shall be prohibited.

PART VIII
REQUIREMENTS OF DEVELOPING STATES

Article 30

Recognition of the special requirements of developing States

1. The Commission shall give full recognition to the special requirements of developing States Parties to this Convention, in particular small island developing States, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks.

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

(a) the vulnerability of developing States Parties, in particular small island developing States, which are dependent on the exploitation of marine living resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and fishworkers, as well as indigenous people in developing States Parties, particularly small island 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 developing States Parties, and territories and possessions.

3. The Commission shall establish a fund to facilitate the effective participation of developing States Parties, particularly small island developing States, and, where appropriate, territories and possessions, in the work of the Commission, including its meetings and those of its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

4. Cooperation with developing States, and territories and possessions, 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 highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

PART IX
PEACEFUL SETTLEMENT OF DISPUTES

Article 31

Procedures for the settlement of disputes

The provisions relating to the settlement of disputes set out in Part VIII of the Agreement apply, mutatis mutandis, to any dispute between members of the Commission, whether or not they are also Parties to the Agreement.

PART X
NON-PARTIES TO THIS CONVENTION

Article 32

Non-parties to this Convention

1. Each member of the Commission shall take measures consistent with this Convention, the Agreement and international law to deter the activities of vessels flying the flags of non-parties to this Convention which undermine the effectiveness of conservation and management measures adopted by the Commission.

2. The members of the Commission shall exchange information on the activities of fishing vessels flying the flags of non-parties to this Convention which are engaged in fishing operations in the Convention Area.

3. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by its nationals or vessels flying its flag which, in the opinion of the Commission, affects the implementation of the objective of this Convention.

4. The members of the Commission shall, individually or jointly, request non-parties to this Convention whose vessels fish in the Convention Area to cooperate fully in the implementation of conservation and management measures adopted by the Commission with a view to ensuring that such measures are applied to all fishing activities in the Convention Area. Such cooperating non-parties to this Convention shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of the relevant stocks.

5. Non-parties to this Convention, may, upon request and subject to the concurrence of the members of the Commission and to the rules of procedure relating to the granting of observer status, be invited to attend meetings of the Commission as observers.

PART XI
GOOD FAITH AND ABUSE OF RIGHTS

Article 33

Good faith and abuse of rights

The obligations assumed under this Convention shall be fulfilled in good faith and the rights recognized in this Convention shall be exercised in a manner which would not constitute an abuse of right.

PART XII
FINAL PROVISIONS

Article 34

Signature, ratification, acceptance, approval

1. This Convention shall be open for signature by Australia, Canada, China, Cook Islands, Federated States of Micronesia, Fiji Islands, France, Indonesia, Japan, Republic of Kiribati, Republic of the Marshall Islands, Republic of Nauru, New Zealand, Niue, Republic of Palau, Independent State of Papua New Guinea, Republic of the Philippines, Republic of Korea, Independent State of Samoa, Solomon Islands, Kingdom of Tonga, Tuvalu, United Kingdom of Great Britain and Northern Ireland in respect of Pitcairn, Henderson, Ducie and Oeno Islands, United States of America and Republic of Vanuatu and shall remain open for signature for twelve months from the fifth day of September 2000.

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.

4. Each Contracting Party shall be a member of the Commission established by this Convention.

Article 35

Accession

1. This Convention shall remain open for accession by the States referred to in article 34, paragraph 1, and by any entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area.

2. After the entry into force of this Convention, the Contracting Parties may, by consensus, invite other States and regional economic integration organizations, whose

nationals and fishing vessels wish to conduct fishing for highly migratory fish stocks in the Convention Area to accede to this Convention.

3. Instruments of accession shall be deposited with the depositary.

Article 36

Entry into force

1. This Convention shall enter into force 30 days after the deposit of instruments of ratification, acceptance, approval or accession by:

(a) three States situated north of the 20° parallel of north latitude; and

(b) seven States situated south of the 20° parallel of north latitude.

2. If, within three years of its adoption, this Convention has not been ratified by three of the States referred to in paragraph 1 (a), this Convention shall enter into force six months after the deposit of the thirteenth instrument of ratification, acceptance, approval or accession or in accordance with paragraph 1, whichever is the earlier.

3. For each State, entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area, or regional economic integration organization which ratifies, formally confirms, accepts or approves the Convention or accedes thereto after the entry into force of this Convention, this Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification, formal confirmation, acceptance, approval or accession.

Article 37

Reservations and exceptions

No reservations or exceptions may be made to this Convention.

Article 38

Declarations and statements

Article 37 does not preclude a State, entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area, or regional economic integration organization, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this 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, entity or regional economic integration organization.

Article 39

Relation to other agreements

This Convention shall not alter the rights and obligations of Contracting Parties, and fishing entities referred to in article 9, paragraph 2, which arise from other agreements compatible with this Convention and which do not affect the enjoyment by

other Contracting Parties of their rights or the performance of their obligations under this Convention.

Article 40

Amendment

1. Any member of the Commission may propose amendments to this Convention to be considered by the Commission. Any such proposal shall be made by written communication addressed to the Executive Director at least 60 days before the meeting of the Commission at which it is to be considered. The Executive Director shall promptly circulate such communication to all members of the Commission.

2. Amendments to this Convention shall be considered at the annual meeting of the Commission unless a majority of the members request a special meeting to consider the proposed amendment. A special meeting may be convened on not less than 60 days notice. Amendments to this Convention shall be adopted by consensus. The text of any amendment adopted by the Commission shall be transmitted promptly by the Executive Director to all members of the Commission.

3. Amendments to this Convention shall enter into force for the Contracting Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by a majority of Contracting Parties. Thereafter, for each Contracting Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Annexes

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

2. The Annexes to this Convention may be revised from time to time and any member of the Commission may propose revisions to an Annex. Notwithstanding the provisions of article 40, if a revision to an Annex is adopted by consensus at a meeting of the Commission, it shall be incorporated in this Convention and shall take effect from the date of its adoption or from such other date as may be specified in the revision.

Article 42

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 one 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 member 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 member to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 43

Participation by territories

1. The Commission and its subsidiary bodies shall be open to participation, with the appropriate authorization of the Contracting Party having responsibility for its international affairs, to each of the following:

American Samoa
French Polynesia
Guam
New Caledonia
Northern Mariana Islands
Tokelau
Wallis and Futuna

2. The nature and extent of such participation 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.

3. Notwithstanding paragraph 2, all such participants shall be entitled to participate fully in the work of the Commission, including the right 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 44

Depositary

The Government of New Zealand shall be the depositary of this Convention and any amendments or revisions thereto. The depositary shall register this Convention with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at Honolulu this fifth day of September, two thousand, in a single original.

SIGNATURES OF REPRESENTATIVES:

AUSTRALIA:

CANADA:

CHINA:

COOK ISLANDS:

FEDERATED STATES OF MICRONESIA:

REPUBLIC OF THE FIJI ISLANDS:

FRANCE:

INDONESIA:

JAPAN:

REPUBLIC OF KIRIBATI:

REPUBLIC OF THE MARSHALL ISLANDS:

REPUBLIC OF NAURU:

NEW ZEALAND:

NIUE:

REPUBLIC OF PALAU:

THE INDEPENDENT STATE
OF PAPUA NEW GUINEA:

REPUBLIC OF THE PHILIPPINES:

05 Sept 2000

REPUBLIC OF KOREA:

THE INDEPENDENT STATE OF SAMOA:

SOLOMON ISLANDS:

THE KINGDOM OF TONGA:

TUVALU:

THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND
IN RESPECT OF PITCAIRN, HENDERSON,
DUCIE AND OENO ISLANDS:

THE UNITED STATES OF AMERICA: R. Tucker Scully

REPUBLIC OF VANUATU:

ANNEX I. FISHING ENTITIES

1. After the entry into force of this Convention, any fishing entity whose vessels fish for highly migratory fish stocks in the Convention Area, may, by a written instrument delivered to the depositary, agree to be bound by the regime established by this Convention. Such agreement shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. Such fishing entity shall participate in the work of the Commission, including decision-making, and shall comply with the obligations under this Convention. References thereto by the Commission or members of the Commission include, for the purposes of this Convention, such fishing entity as well as Contracting Parties.

3. If a dispute concerning the interpretation or application of this Convention involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

4. The provisions of this Annex relating to participation by fishing entities are solely for the purposes of this Convention.

ANNEX II. REVIEW PANEL

1. In accordance with article 20, paragraph 6, an application for review of a decision of the Commission shall be submitted within 30 days of the adoption of the decision by written notification to the Executive Director. Such notification shall be accompanied by a statement of the grounds upon which the review is sought. The Executive Director shall circulate copies of the notification and the accompanying statement to all members of the Commission.

2. The review panel shall be constituted as follows:

(a) The review panel shall consist of three members appointed in accordance with this Annex from the list of experts in the field of fisheries drawn up and maintained by the Food and Agriculture Organization of the United Nations pursuant to Annex VIII, article 2, of the 1982 Convention or a similar list maintained by the Executive Director;

(b) The member of the Commission submitting the application for review ("the applicant") shall appoint one member, who may or may not be its national. The appointment shall be included in the written notification referred to in paragraph 1;

(c) Where more than one member of the Commission is seeking review of the same decision, such members shall, within 20 days of receipt of the first notification submitted, appoint one member of the panel jointly by agreement, irrespective of the grounds upon which review is sought by each applicant. If the members concerned are unable to reach agreement on the appointment, the appointment shall be made in accordance with subparagraph (f), at the request of any such member;

(d) The chairman of the Commission shall, within 20 days of receipt of the notification referred to in paragraph 1 of this Annex, appoint one member;

(e) The other member shall be appointed by agreement between the member or members of the Commission seeking the review and the chairman of the Commission. They shall appoint the President of the review panel from among those three members. If, within 20 days of receipt of the notification referred to in paragraph 1 of this Annex, the member or members seeking the review and the chairman of the Commission are unable to reach agreement on the appointment of one or more members of the panel to be appointed by agreement, or on the appointment of the President of the review panel, the remaining appointment or appointments shall be made in accordance with subparagraph (f), at the request of any party. Such request shall be made within 10 days of the expiration of the aforementioned 20 day period;

(f) Unless the parties agree that any appointment under subparagraphs (c), (d) and (e) of this paragraph be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments.

(g) Any vacancy shall be filled in the manner described for the initial appointment.

3. A hearing shall be convened at a place and on a date to be determined by the panel within 30 days following the constitution of the review panel.

4. The review panel shall determine its own procedures, providing for the expeditious conduct of the hearing and assuring to the applicant or applicants full opportunity to be heard and to present its or their case.

5. The Executive Director shall act on behalf of the Commission and shall provide the review panel with sufficient information to enable it to understand the basis upon which the decision was made.

6. Any member of the Commission may submit a memorandum to the review panel concerning the matter under review and the panel shall allow any such member 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 applicant or, if there is more than one applicant, divided equally among the applicants; and

(b) 30 per cent shall be borne by the Commission from its annual budget.

8. Any decision of the review panel shall be taken by a majority of its members.

9. If the applicant or, where there is more than one applicant, any one of them, does not appear before the review panel, the panel may continue the proceedings and make its findings and recommendations. Absence of an applicant shall not constitute a bar to the review proceedings.

10. The findings and recommendations of the review panel shall be confined to the subject matter of the application and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the finding. Any member of the panel may attach a separate or dissenting opinion to the finding. The review panel shall not, however, substitute its decision for that of the Commission. The panel shall communicate its findings and recommendations, including its reasons, to the applicant or applicants and the Executive Director within 30 days of the end of the hearing. The Executive Director shall circulate copies of the review panel's findings and recommendations and reasons therefor to all members of the Commission.

ANNEX III. TERMS AND CONDITIONS FOR FISHING

Article 1

Introductory

The operator of every fishing vessel authorized to be used for fishing in the Convention Area shall comply with the following terms and conditions at all times when the vessel is in the Convention Area. Such terms and conditions shall apply in addition to any terms and conditions which may apply to the vessel in areas under the national jurisdiction of a member of the Commission by reason of a licence issued by such member or pursuant to a bilateral or multilateral fisheries agreement. For the purposes of this Annex, "operator" means any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer.

Article 2

Compliance with national laws

The operator of the vessel shall comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws.

Article 3

Obligations of the operator in respect of observers

1. The operator and each member of the crew shall allow and assist any person identified as an observer under the regional observer programme to:

(a) embark at a place and time agreed to;

(b) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing;

(c) remove samples;

(d) disembark at an agreed place and time; and

(e) carry out all duties safely.

2. The operator or any crew member shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties.

3. The operator shall provide the observer, while on board the vessel, at no expense to the observer or the observer's government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.

Article 4

Regulation of transhipment

1. The operator shall comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures established by the Commission with respect to transhipment in the Convention Area.

2. The operator shall allow and assist any person authorized by the Commission or by the member of the Commission in whose designated port or area a transhipment takes place to have full access to and use of facilities and equipment which such authorized person may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying. The operator shall also allow and assist any such authorized person to remove samples and gather any other information required to fully monitor the activity. The operator or any member of the crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere

with any such authorized person in the performance of such person's duties. Every effort should be made to ensure that any disruption to fishing operations is minimized during inspections of transhipments.

Article 5

Reporting

The operator shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards for collection of such data set out in Annex I of the Agreement.

Article 6

Enforcement

1. The authorization issued by the flag State of the vessel and, if applicable, any licence issued by a coastal State Party to this Convention, or a duly certified copy, facsimile or telex confirmation thereof, shall be carried on board the vessel at all times and produced at the request of an authorized enforcement official of any member of the Commission.

2. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified officer of a member of the Commission, including to stop, to move to a safe location, and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.

3. The vessel shall be marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels or such alternative standard as may be adopted by the Commission. At all times when the vessel is in the Convention Area, all parts of such markings shall be clear, distinct and uncovered.

4. The operator shall ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF) or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission.

5. The operator shall ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

6. At all times when the vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a licence

to fish, and at all times when the vessel is navigating on the high seas in the Convention Area and has not been authorized by its flag State to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that it is not readily available to be used for fishing.

ANNEX IV. INFORMATION REQUIREMENTS

The following information shall be provided to the Commission in respect of each fishing vessel entered in the record required to be maintained under article 24, paragraph 4, of this Convention:

1. Name of fishing vessel, registration number, previous names (if known), and port of registry;
2. Name and address of owner or owners;
3. Name and nationality of master;
4. Previous flag (if any);
5. International Radio Call Sign;
6. Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);
7. Colour photograph of vessel;
8. Where and when built;
9. Type of vessel;
10. Normal crew complement;
11. Type of fishing method or methods;
12. Length;
13. Moulded depth;
14. Beam;
15. Gross register tonnage;
16. Power of main engine or engines;
17. The nature of the authorization to fish granted by the flag State;
18. Carrying capacity, including freezer type, capacity and number and fish hold capacity.

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