

## **Fisheries Act 1996 Amendment Act (No. 2) 1999**

An Act to amend the Fisheries Act 1996

BE IT ENACTED by the Parliament of New Zealand as follows:

### **1 Short Title and commencement**

(1) This Act may be cited as the Fisheries Act 1996 Amendment Act (No. 2) 1999, and is part of the Fisheries Act 1996 ("the principal Act").

(2) This section and sections 29, 35, and 36 come into force on the day after the date on which this Act receives the Royal assent.

(3) The other provisions of this Act come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and for different purposes.

### **2 Interpretation**

Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

'Fish Stocks Agreement'

((a) 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, done at New York on 4 December 1995 (a copy of the English text of which is set out in Schedule 1A); and

((b) Includes amendments to the Fish Stocks Agreement made in accordance with Article 45 of the Agreement that are, or will become, binding on New Zealand from time to time:

'Freshwater eel' means the species *Anguilla australis*, *Anguilla dieffenbachii*, and *Anguilla reinhardtii*, in all areas in New Zealand fisheries waters:

High seas' means the waters outside the national fisheries jurisdiction of any country:

High seas fishery inspector' means a person who is a high seas fishery inspector under section 113Q:

High seas fishing permit' means a permit issued under section 113H:

High Seas Permit Register' means the High Seas Permit Register kept under section 98 (1) (c):

New Zealand national' means

(a) A New Zealand citizen; or

(b) A person who is ordinarily resident in New Zealand; or

(c) A body corporate established by or under New Zealand law:".

### **3 Effect of decision to alter provisional catch history**

1) Section 52 (3) of the principal Act is amended by omitting from paragraph (c) (ii) the word "other".

(2) Section 52 (3) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph: ((d) If any appeals result in persons being entitled to less individual transferable quota than the amount of provisional individual transferable quota that was transferred

to the Crown under paragraph (a) and quota for that stock was allocated under section 47 (1) (b), from the amount of quota remaining after making all allocations required under paragraph (c),-

(i) Calculate, on a pro rata basis, for all persons (other than persons subject to the appeals and the Commission) who received an allocation under section 47 (1) (b), the amount of additional quota to which each person is entitled up to the amount each person would receive under section 53 (1); and

(ii) After making the calculation in subparagraph (i), allocate to all persons (other than the persons subject to the appeals and the Commission) who received an allocation in accordance with section 47 (1) (b) and who have continuously held and continue to hold quota for that stock, their additional allocation of quota as calculated under subparagraph (i); and

(iii) If any quota remains after allocation under subparagraph (ii) as a result of ineligibility of persons who have not continuously held and continue to hold quota, allocate on a pro rata basis to all persons (other than the Commission) who received an allocation in accordance with section 47 (1) (b) and who have continuously held and continue to hold quota for that stock up to the amount each person would receive under section 53 (1)."

(3) Section 52 (4) of the principal Act is amended---

(a) By omitting from paragraph (b) (ii) the word "other":

(b) By inserting in paragraph (c), after the words "on a pro rata basis", the words "up to the amount each person would receive under section 53 (1)".

(4) Section 52 of the principal Act is amended by inserting, after subsection (4), the following subsection:

"(4A) Any quota remaining unallocated under subsections (3) (d) and (4) (c) is the property of the Crown subject to section 49."

#### 4 Calculation of entitlement to quota following appeal

4. Calculation of entitlement to quota following appeal---Section 53 of the principal Act is amended by omitting subsection (1), and substituting the following subsection:

"(1) Every person entitled to receive a transfer of individual transferable quota under section 52 must receive---

"(a) An amount of individual transferable quota for the stock concerned equivalent to the number of shares the person would have received under section 47 if the person (and all other persons whose provisional catch history has since been altered) had owned the revised amount of provisional catch history on the date on which quota was allocated for that stock under section 47; and

"(b) An amount of shares equal to any shares that would have been transferred by the chief executive under section 22 (1), where there has been a reduction in the total allowable commercial catch between the date of the original allocation of those shares under section 47 and the date of this calculation, as if

that person had owned the revised amount of shares determined under section 53 (1) (a)."

## 5 Determination or order not to affect quota allocated to Commission

5. Determination or order not to affect quota allocated to Commission---Section 55 of the principal Act is amended by omitting the words ``of this Act'', and substituting the words ``(or part of such quota)".

## 6 Issue of licences

6. Issue of licences---Section 83 (3) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:  
``(a) Must have regard to the previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, master, or crew; and".

## 7 All fishing to be authorised by fishing permit unless specific exemption held

7. All fishing to be authorised by fishing permit unless specific exemption held---(1) Section 89 of the principal Act is amended by inserting, after subsection (8), the following subsection:

``(8A) Subsections (4) to (8) do not apply to the taking of freshwater eels that are subject to the quota management system."

(2) Section 89 (11) of the principal Act is repealed.

## 8 Right of review against decisions made under delegated authority

8. Right of review against decisions made under delegated authority---Section 94 of the principal Act is amended---

- (a) By inserting, after the words ``fishing permit" the first 2 times they appear, the words ``or high seas fishing permit":
- (b) By omitting the words ``of this Act", and substituting the words ``or Part 6A":
- (c) By omitting the words ``fishing permit holder", and substituting the words ``holder of the permit".

## 9 Registers

9. Registers---(1) Section 98 (1) of the principal Act is amended by adding the following paragraph:

“(c) A register to be called the High Seas Permit Register.”

(2) Section 98 (4) of the principal Act is amended by inserting, after the words “Permit Register”, the words “or the High Seas Permit Register”.

#### 10 Matters to be shown in High Seas Permit Register

10. Matters to be shown in High Seas Permit Register--- The principal Act is amended by inserting, after section 101, the following section:

“101A. The High Seas Permit Register must contain all the particulars required by regulations made under section 297.”

#### 11 Access to registers and application of Privacy Act 1993

11. Access to registers and application of Privacy Act 1993---Section 102 (1) of the principal Act is amended by omitting the words “and the Fishing Vessel Register”, and substituting the words “, the Fishing Vessel Register, and the High Seas Permit Register”.

#### 12 Fishing vessels must be registered

12. Fishing vessels must be registered---Section 103 (6) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) The previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charterparty, notified user, master, or crew; and”.

#### 13 Fish carriers must be registered

13. Fish carriers must be registered---Section 105 (5) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) The previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charterparty, notified user, master, or crew; and”.

#### 14 Presumption that fish on registered vessel caught in New Zealand

14. Presumption that fish on registered vessel caught in New Zealand---The principal Act is amended by repealing section 109, and substituting the following section:

``109. (1) For the purpose of this Act, all fish, aquatic life, or seaweed on board, landed from, or transferred to or from, a vessel registered under this Act or a New Zealand ship is deemed to have been taken in New Zealand fisheries waters and the provisions of this Act apply accordingly.

``(2) Subsection (1) applies---

``(a) Unless the contrary is proved; and

``(b) Whether the fish, aquatic life, or seaweed is found on board, or landed, or transferred within New Zealand or New Zealand fisheries waters or elsewhere."

#### 15 All fishing within foreign fishing jurisdiction to be authorised

15. All fishing within foreign fishing jurisdiction to be authorised---The principal Act is amended by inserting, after section 113, the following section:

``113A. (1) No New Zealand national, and no person using a ship that is registered under the Ship Registration Act 1992 or that flies the New Zealand flag, may take or transport fish, aquatic life, or seaweed in the national fisheries jurisdiction of a foreign country unless the fish, aquatic life, or seaweed is taken or transported under, and in accordance with, the laws of that jurisdiction.

``(2) Every person who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252 (3)."

#### 16 New Part inserted

16. New Part inserted---The principal Act is amended by inserting, after Part VI, the following Part:

##### ``PART 6A

##### ``High Seas Fishing

``113B. Interpretation--- In this Part, unless the context otherwise requires,---

`` 'FAO Compliance Agreement' means the Agreement to Promote

Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November 1993:

- `` 'Flag state', in relation to a vessel that is not a New Zealand ship, means---
  - ``(a) The state in which the vessel is registered; or
  - ``(b) If the vessel is unregistered, the state whose flag the vessel flies:
- `` 'Foreign high seas inspector' means a person who is duly authorised, by a state that is a member of or is a participant in a global, regional, or sub-regional fisheries organisation or arrangement, to exercise the enforcement powers of an inspector in relation to the area covered by the organisation or arrangement under---
  - ``(a) The Fish Stocks Agreement; or
  - ``(b) The boarding and inspection procedures of the organisation or arrangement:
- `` 'Global, regional, or sub-regional fisheries organisation or arrangement' means an agreement or arrangement notified in the Gazette in accordance with section 113C:
- `` 'International conservation and management measures' means measures to conserve or manage 1 or more species of living marine resources, which measures are---
  - ``(a) Adopted by a global, regional, or sub-regional fisheries organisation or arrangement; and
  - ``(b) Notified in the Gazette in accordance with section 113C:
- `` 'Participating state' means a foreign state or an organisation of foreign states that is certified by the Secretary of Foreign Affairs and Trade under section 113C as being a party to the Fish Stocks Agreement:
- `` 'Serious violation' has the meaning given to it by Article 21.11 of the Fish Stocks Agreement.

``113C. Notification and certification by Secretary of Foreign Affairs and Trade---(1) The Secretary of Foreign Affairs and Trade may from time to time, by notice in the Gazette, give notice of---

- ``(a) A global, regional, or sub-regional fisheries organisation or arrangement; or
- ``(b) International conservation and management measures.

``(2) A notice given under subsection (1) must specify where a copy of the constitution of the organisation or a copy of the arrangement or international conservation and management measures, as the case may be, may be obtained.

``(3) The Secretary of Foreign Affairs and Trade may sign a certificate stating that a specified state is or is not---

- ``(a) A state that is a party to the Fish Stocks Agreement; or
- ``(b) A state that is a party to the FAO Compliance Agreement; or

- “(c) A state that is a participant in, is a member of, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement; or
- “(d) A state that is a signatory to the Fish Stocks Agreement or to the FAO Compliance Agreement, and has legislative and administrative mechanisms to control its vessels on the high seas in accordance with those agreements.

“(4) A certificate referred to in subsection (3) is, for all purposes, conclusive evidence of its contents unless the contrary is proved by the production of a more recent certificate issued under that subsection.

#### “Requirements as to Taking of Fish on High Seas

“113D. Taking and transportation of fish, etc, on high seas using New Zealand ships---(1) No person may use a New Zealand ship, or a tender of that ship, to take (by any method) on the high seas any fish, aquatic life, or seaweed for sale, unless---

- “(a) That person does so under the authority of, and in accordance with, a current high seas fishing permit issued in respect of that ship; and
- “(b) The ship is registered---
  - “(i) Under the Ship Registration Act 1992; and
  - “(ii) In the Fishing Vessel Register as a fishing vessel; and
- “(c) The holder of the permit is named in the Fishing Vessel Register as an operator of that vessel.

“(2) No person may use a New Zealand ship, or a tender of that ship, to transport any fish, aquatic life, or seaweed on the high seas, unless---

- “(a) That person does so under the authority of, and in accordance with, a current high seas fishing permit issued in respect of that ship; and
- “(b) The fish, aquatic life, or seaweed was taken---
  - “(i) On the high seas under the authority of, and in accordance with, a high seas fishing permit; or
  - “(ii) In the national fisheries jurisdiction of a foreign state under, and in accordance with, the laws of that state; and
- “(c) The ship is registered---
  - “(i) Under the Ship Registration Act 1992; and
  - “(ii) In the Fishing Vessel Register as either a fish carrier or a fishing vessel; and
- “(d) The holder of the permit is named in the Fishing Vessel Register as an operator of that vessel.

“(3) Subsection (2) does not apply if the fish, aquatic life, or seaweed has previously been landed in New Zealand or in any other

country.

“(4) No person may take or transport any fish, aquatic life, or seaweed under the authority of a high seas fishing permit unless that person is---

- “(a) The holder of that permit; or
- “(b) An employee or agent of the holder of the permit; or
- “(c) The master, or a member of the crew, of the ship in respect of which the permit is in force.

“(5) Every person who contravenes subsection (1) or subsection (2) or subsection (4) commits an offence and is liable on conviction to the penalty set out in section 252 (3).

“113E. Use of foreign vessels on high seas by New Zealand nationals---(1) No New Zealand national may use a vessel that is not registered under the Ship Registration Act 1992, or a tender of that vessel, to take (by any method) on the high seas any fish, aquatic life, or seaweed for sale, or to transport any fish, aquatic life, or seaweed taken on the high seas, except in accordance with an authorisation issued by a state specified in subsection (2).

“(2) An authorisation may be issued---

- “(a) By a state that is a party to the Fish Stocks Agreement; or
- “(b) By a state that is a party to the FAO Compliance Agreement; or
- “(c) By a state that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the authorisation relates; or
- “(d) By a state that---
  - “(i) Is a signatory to the Fish Stocks Agreement; and
  - “(ii) Has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

“(3) Every person who contravenes subsection (1) commits an offence and is liable on conviction to the penalty set out in section 252 (3).

“113F. Exemption from section 113E--- (1) The Minister may, on receipt of an application in the approved form accompanied by the prescribed fee (if any), exempt a New Zealand national from section 113E if the Minister is satisfied that---

- “(a) The applicant is a citizen of another country and that country has jurisdiction over the applicant's proposed fishing activities on the high seas; and
- “(b) New Zealand is not a participant in, or a member of, or has not accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement that covers the area of the high seas in which the applicant proposes to take or transport fish, aquatic life, or seaweed; and
- “(c) The applicant has not engaged in fishing or transportation---

- “(i) In a manner that undermined the effectiveness of international conservation and management measures; and
  - “(ii) That has resulted in a high seas fishing permit, or an equivalent authorisation granted by a participating state or a party to the FAO Compliance Agreement, being suspended or revoked during the 3 years immediately preceding the application (‘the 3-year period’); and
- “(d) The applicant has not engaged in fishing or transportation on the high seas during the 3-year period---
  - “(i) Without a high seas fishing permit (or equivalent authorisation granted by a participating state), if a high seas fishing permit was required for that fishing or transportation; and
  - “(ii) In a manner that undermined the effectiveness of international conservation and management measures.

“(2) An exemption granted by the Minister must be limited to 1 or more of the following, as specified in the exemption:

- “(a) An area or areas of the high seas:
- “(b) A species of fish, aquatic life, or seaweed:
- “(c) A period of time.

“(3) The Minister may, by notice in writing to the holder of an exemption granted under subsection (1), amend or revoke the exemption.

“(4) Section 113E does not apply to a New Zealand national taking or transporting fish, aquatic life, or seaweed in accordance with an exemption granted under subsection (1).

#### “Issue of High Seas Fishing Permits

“113G. Application for high seas fishing permit---An application for a high seas fishing permit---

- “(a) May be made only by the operator of a vessel that is registered in the Fishing Vessel Register as either a fish carrier or a fishing vessel; and
- “(b) Must be made to the chief executive in the approved form.

“113H. Issue of high seas fishing permit---(1) The chief executive may issue a high seas fishing permit only if the chief executive is satisfied that---

- “(a) The vessel to which the permit relates is registered---
  - “(i) Under the Ship Registration Act 1992; and
  - “(ii) In the Fishing Vessel Register as either a fish carrier or a fishing vessel; and
- “(b) The applicant has not engaged in fishing or transportation---
  - “(i) In a manner that undermined the effectiveness of international conservation and management measures; and
  - “(ii) That has resulted in a high seas fishing permit, or an equivalent authorisation granted by a participating state or a

party to the FAO Compliance Agreement, being suspended or revoked during the 3 years immediately preceding the application ('the 3-year period'); and

“(c) The applicant has not engaged in fishing or transportation on the high seas during the 3-year period---

“(i) Without a high seas fishing permit (or equivalent authorisation granted by a participating state), if a high seas fishing permit was required for that fishing or transportation; and

“(ii) In a manner that undermined the effectiveness of international conservation and management measures.

“(2) Before issuing a high seas fishing permit, the chief executive may have regard to---

“(a) The previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charterparty, notified user, master, or crew; and

“(b) Such other matters as the chief executive considers relevant.

“(3) The chief executive may, but is not required to, issue a high seas fishing permit to a person even though that person may---

“(a) Owe the Crown a levy payable under Part XIV; or

“(b) Have unpaid and overdue deemed value amounts of more than \$1,000; or

“(c) Hold a fishing permit that is subject to conditions by virtue of or under section 78 (1) or (2).

“113I. Term and content of high seas fishing permit--- (1) A high seas fishing permit may be issued for a period not exceeding 5 years.

“(2) A high seas fishing permit must specify---

“(a) The name of the permit holder; and

“(b) The fishing vessel or fish carrier to which the permit relates; and

“(c) Any conditions to which the permit is subject under section 113K.

#### “Compliance with Conditions and Regulations

“113J. Compliance with conditions and regulations--- (1) A person taking fish, aquatic life, or seaweed under the authority of a high seas fishing permit must comply with---

“(a) Any conditions to which the permit is subject under section 113K; and

“(b) Any regulations made under section 297.

“(2) Every person who contravenes a condition to which a high seas fishing permit is subject under section 113K commits an offence and is

liable to the penalty set out in section 252 (5).

113K. Conditions of high seas fishing permit---(1) A high seas fishing permit may be subject to such conditions as the chief executive considers appropriate, including conditions relating to the following matters:

- “(a) The areas in which fishing or transportation is authorised:
- “(b) The seasons, times, and particular voyages during which fishing or transportation is authorised:
- “(c) The species, size, age, and quantities of fish, aquatic life, or seaweed that may be taken or transported:
- “(d) The methods by which fish, aquatic life, or seaweed may be taken:
- “(e) The types, size, and amount of fishing gear or equipment that may be used or carried, and the modes of storage of that gear or equipment when not in use:
- “(f) The use, transfer, transshipment, landing, receiving, and processing of fish, aquatic life, or seaweed taken:
- “(g) Procedures or requirements, or both, enabling the verification of fish, aquatic life, or seaweed taken or being taken by the vessel, including procedures or restrictions relating to the species of, quantities of, or areas from which, fish, aquatic life, or seaweed are being or have been taken by the vessel:
- “(h) Entry by the vessel to New Zealand or foreign ports, whether for the inspection of its catch or for other purposes:
- “(i) Reports and information required to be given to the chief executive by the permit holder, and records required to be kept by the permit holder:
- “(j) Management controls regarding fishing-related mortality of fish, aquatic life, or seaweed:
- “(k) The conduct of specified programmes of fisheries research:
- “(l) The marking of the vessel and other means for its identification:
- “(m) The placing of observers on the vessel and the payment of any associated prescribed fees and charges by the permit holder:
- “(n) The installation and maintenance of equipment to monitor fishing or transportation under the permit and the payment of any associated prescribed fees and charges by the permit holder:
- “(o) The installation on the vessel and the maintenance of any automatic location communicator or other equipment for the identification and location of the vessel, and of adequate navigational equipment to enable the vessel to fix its position, and the payment of any associated prescribed fees and charges by the permit holder:
- “(p) The carriage on board the vessel of specified charts, publications, and instruments:
- “(q) The disposal of fish, aquatic life, and seaweed:
- “(r) Measures to give effect to international conservation and management measures.

“(2) The chief executive may from time to time, by written notice to the holder of a high seas fishing permit, amend, add to, or revoke any conditions of the permit with effect from the date specified in the notice.

“(3) If the chief executive considers it expedient to do so, the chief executive may---

- “(a) Require the high seas fishing permit holder to surrender the permit; and
- “(b) Replace that permit with a new permit containing new conditions.

“(4) A condition imposed on a high seas fishing permit under this section is not invalid merely because the condition is more restrictive or more onerous than any conditions that are or may be imposed on fishing by any regulations made under this Act.

“113L. High seas fishing permit to be carried on vessel---(1) A person taking or transporting fish, aquatic life, or seaweed under the authority of a high seas fishing permit must---

- “(a) Carry the permit (or a copy of the permit) on board the vessel to which the permit relates at all times; and
- “(b) Show the permit to a fishery officer or high seas fishery inspector or foreign high seas inspector on demand.

“(2) Every person who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252 (5).

“113M. Notification of change of ownership of vessel--- (1) The holder of a high seas fishing permit must notify the chief executive within 5 working days of any change of ownership or operator of the vessel to which the permit relates.

“(2) Every person who contravenes subsection (1) commits an offence and is liable to the penalty set out in section 252 (6).

#### “Suspension and Revocation of High Seas Fishing Permits

“113N. Chief executive may suspend or revoke high seas fishing permit---(1) The chief executive may revoke a high seas fishing permit if the chief executive is satisfied that any information or evidence supplied with the application for the permit was false or misleading in any material particular.

“(2) The chief executive may suspend or revoke a high seas fishing permit if the chief executive is satisfied that---

- “(a) The vessel to which the permit relates is no longer---
  - “(i) Registered under the Ship Registration Act 1992; or
  - “(ii) Registered in the Fishing Vessel Register as either a fish carrier or a fishing vessel; or
- “(b) The permit holder, or any person authorised to fish under the

authority of the permit, has been convicted of an offence against this Part; or

“(c) The permit holder has been convicted of a fishing-related offence under the laws of a country other than New Zealand; or

“(d) The permit holder is no longer the owner or operator of the vessel.

“(3) A person may, in writing, request that the chief executive revoke a high seas fishing permit issued to that person.

“(4) A request made under subsection (3) must be accompanied by the high seas fishing permit and any copies of the permit.

“113O. Procedure to be followed before suspending or revoking permit---Before suspending or revoking a high seas fishing permit under section 113N (1) or (2), the chief executive must---

“(a) Give the permit holder not less than 7 days' notice in writing of the chief executive's intention to suspend or revoke the permit; and

“(b) Include in or with the notice a statement---

“(i) Of the chief executive's reasons; and

“(ii) Of the date on which the permit will be revoked or suspended; and

“(iii) In the case of suspension of the permit, of the period for which the permit will be suspended; and

“(c) Give the permit holder a reasonable opportunity to make submissions to the chief executive; and

“(d) Consider any submissions made to the chief executive by the permit holder.

“113P. Effect of suspension or revocation of permit--- (1) Where the chief executive revokes a high seas fishing permit under section 113N,---

“(a) The high seas fishing permit is cancelled immediately and ceases to have any effect for the purposes of this Act; and

“(b) The permit holder must ensure that the permit and any copies of the permit are surrendered immediately to the chief executive.

“(2) Where the chief executive suspends a high seas fishing permit under section 113N,---

“(a) The suspension is for the period specified by the chief executive under section 113O (b); and

“(b) The permit does not authorise fishing or transportation; but

“(c) The obligations and conditions to which the permit is subject, or that are imposed by or under this Act in relation to the permit, continue to have effect.

“(3) Nothing in this section requires the chief executive to remit or refund any fees, charges, or levies paid or payable by the permit holder

for the period from the date of issue of the permit to the date of revocation.

#### ``High Seas Fishery Inspectors

``113Q. High seas fishery inspectors---(1) Every fishery officer (other than an honorary fishery officer or an examiner) is a high seas fishery inspector.

``(2) A high seas fishery inspector may direct a person under his or her command to carry out such duties of a high seas fishery inspector as he or she specifies, for such period as he or she thinks necessary.

``(3) A person who receives a direction under subsection (2) has, for the purpose of carrying out the specified duties, all the powers of a high seas fishery inspector.

``113R. Powers of high seas fishery inspectors in relation to New Zealand vessels---For the purposes of the administration and enforcement of this Part, a high seas fishery inspector has all of the powers of a fishery officer in relation to a vessel on the high seas that---

``(a) Is registered under the Ship Registration Act 1992; or

``(b) Flies the New Zealand flag.

``113S. Powers of high seas fishery inspectors in relation to foreign vessels---(1) A high seas fishery inspector may, for the purpose of ensuring compliance with international conservation and management measures adopted by a global, regional, or sub-regional fisheries organisation or arrangement of which New Zealand is a member or in which New Zealand is a participant, board and inspect a vessel in an area of the high seas that is covered by that organisation or arrangement, or in New Zealand fisheries waters, if---

``(a) The vessel is not registered under the Ship Registration Act 1992; and

``(b) The flag state of the vessel is---

``(i) A party to the Fish Stocks Agreement, whether or not the flag state is a member of, or a participant in, that organisation or arrangement; or

``(ii) A member of, or participant in, a global, regional, or sub-regional organisation or arrangement that has established boarding and inspection procedures as provided in Article 21.2 of the Fish Stocks Agreement.

``(2) If the flag state in relation to a vessel to which subsection

(1) applies authorises the chief executive (in accordance with Article 21.6 (b) of the Fish Stocks Agreement) to investigate whether the vessel has engaged in an activity contrary to those international conservation and management measures, a high seas fishery inspector has, in relation to the vessel,---

- “(a) All of the powers of a fishery officer; or
- “(b) If the flag state specifies the powers of a fishery officer that the high seas fishery inspector may exercise, those powers.

“113T. Boarding and inspection procedures relating to foreign vessels---(1) A high seas fishery inspector who boards a vessel under section 113S (1) must---

- “(a) Give the master of the vessel evidence of the inspector's identity and of the fact that he or she is a high seas fishery inspector; and
- “(b) Provide to the master of the vessel a copy of a report on the boarding and inspection, including any objection or statement that the master has advised the high seas fishery inspector that the master wishes to have included in the report; and
- “(c) Promptly leave the vessel after completing the inspection unless he or she finds evidence that the vessel has committed a serious violation.

“(2) The chief executive must provide a copy of the report referred to in subsection (1) (b) to the authorities of the flag state of the vessel.

“(3) At the time of a boarding and inspection under section 113S (1), the chief executive must initiate action to give notice of the boarding and inspection to the authorities of the flag state of a vessel that is boarded and inspected.

“(4) A high seas fishery inspector must not interfere with any attempt by the master of the vessel to communicate with the authorities of the flag state of the vessel during the boarding and inspection.

“(5) When undertaking a boarding and inspection under section 113S (1), a high seas fishery inspector is authorised, in order to verify compliance by the vessel with the relevant international conservation and management measures, to inspect---

- “(a) The vessel; and
- “(b) The vessel's authorisation to fish, or transport fish, aquatic life, or seaweed, in the relevant area of the high seas; and
- “(c) The vessel's fishing gear and equipment; and
- “(d) Facilities; and
- “(e) Fish and fish products; and
- “(f) Records and other relevant documents.

“113U. Investigation of serious violations---(1) If, as a result of a boarding and inspection under section 113S (1), a high seas fishery inspector believes that the vessel has been used to commit a serious violation,---

- “(a) The high seas fishery inspector must notify the chief executive as soon as practicable; and
- “(b) The chief executive must advise the authorities of the flag

state of the vessel as soon as practicable.

“(2) A high seas fishery inspector may remain on board the vessel and may require the master to assist in further investigations for so long as the flag state---

“(a) Fails to respond to a notification under subsection (1); or

“(b) Fails to take action under its own law in respect of the serious violation.

“(3) The high seas fishery inspector may require the master to bring the vessel without delay to a port specified by the high seas fishery inspector if the flag state fails, within 3 working days after receipt by the authorities of the flag state of the notification, to---

“(a) Respond to a notification under subsection (1); or

“(b) Take action under its own law in respect of the serious violation.

“(4) In this section, ‘working day’, in relation to a flag state, means any day of the week other than---

“(a) Saturday or Sunday; or

“(b) A public holiday in that state.

“113V. Boarding and inspection procedures modified by global, regional, or sub-regional fisheries organisation or arrangement---(1) This section applies where---

“(a) A global, regional, or sub-regional fisheries organisation or arrangement of which New Zealand is a member, or in which New Zealand is a participant, establishes procedures for boarding and inspection of vessels as provided in Article 21.2 of the Fish Stocks Agreement; and

“(b) A high seas fishery inspector boards and inspects a foreign vessel under section 113S (1) for the purpose of ensuring compliance with international conservation and management measures established by that organisation or arrangement.

“(2) To the extent that the procedures established by the organisation or arrangement are different from the requirements of section 113T or section 113U, the high seas fishery inspector and the chief executive must comply with the procedures established by the organisation or arrangement.

“113W. Persons on New Zealand ships to co-operate with foreign high seas inspectors---(1) The master of a ship must co-operate with a foreign high seas inspector appointed by a participating state that is a member of or participant in a global, regional, or sub-regional fisheries organisation or arrangement where---

“(a) The ship---

“(i) Is registered under the Ship Registration Act 1992; or

“(ii) Flies the New Zealand flag; and

- “(b) The ship is on the high seas in an area covered by that organisation or arrangement; and
- “(c) The organisation or arrangement has not established procedures for boarding and inspecting vessels as provided in Article 21.2 of the Fish Stocks Agreement.

“(2) The master of a ship must co-operate with a foreign high seas inspector appointed in relation to an area covered by a global, regional, or sub-regional fisheries organisation or arrangement where---

- “(a) The ship---
  - “(i) Is registered under the Ship Registration Act 1992; or
  - “(ii) Flies the New Zealand flag; and
- “(b) The ship is on the high seas in an area covered by the organisation or arrangement; and
- “(c) The organisation or arrangement has established procedures for boarding and inspecting vessels as provided in Article 21.2 of the Fish Stocks Agreement.

“(3) Every person on a ship to which subsection (1) or subsection (2) applies must---

- “(a) Accept and facilitate prompt and safe boarding of the ship by the foreign high seas inspector; and
- “(b) Co-operate with and assist in the inspection of the vessel; and
- “(c) Not obstruct, intimidate, or interfere with the foreign high seas inspector in the performance of his or her duties; and
- “(d) Allow the foreign high seas inspector to communicate with the authorities of New Zealand and of the state that appointed the inspector; and
- “(e) Provide reasonable facilities to the foreign high seas inspector, including food and accommodation (where appropriate); and
- “(f) Facilitate safe disembarkation from the ship by the foreign high seas inspector.

“(4) Every person who contravenes subsection (1), subsection (2), or subsection (3) commits an offence and is liable to the penalty set out in section 252 (3).

“113X. Powers of foreign high seas inspector when requested to investigate---(1) The chief executive may authorise a foreign high seas inspector to investigate a ship that is registered under the Ship Registration Act 1992 or that flies the New Zealand flag, under Article 21.6 (b) of the Fish Stocks Agreement, if---

- “(a) The inspector has boarded the ship under---
  - “(i) The Agreement; or
  - “(ii) Boarding and inspection procedures established as provided in Article 21.2 of the Agreement; and
- “(b) The chief executive receives a report from the inspector stating that there is evidence that the ship has taken or transported

fish, aquatic life, or seaweed in contravention of international conservation and management measures.

“(2) If the chief executive authorises the foreign high seas inspector to investigate under Article 21.6 (b) of the Fish Stocks Agreement,---

“(a) The foreign high seas inspector has the powers of a fishery officer in relation to the ship; and

“(b) The chief executive must advise the master of the ship as soon as practicable.

“(3) For the purposes of any proceedings for an offence under this Part, evidence obtained by a foreign high seas inspector in the exercise of powers under this section is admissible as if the evidence were obtained by a fishery officer.

“113Y. Chief executive may withdraw authorisation to fish under high seas fishing permit--- (1) This section applies where the chief executive receives a report from a foreign high seas inspector that a person on a ship is---

“(a) Failing to comply with section 113W; or

“(b) Failing to co-operate with or obstructing the foreign high seas inspector in the exercise of his or her powers under---

“(i) The Fish Stocks Agreement; or

“(ii) Boarding and inspection procedures established as provided in Article 21.2 of the Agreement.

“(2) The chief executive may, by notice to the master of the ship (which notice may be given orally or by any form of electronic communication), suspend the high seas fishing permit under which the ship is taking or transporting fish.

#### “Administrative Penalties

“113Z. Administrative penalties for high seas fisheries offences---(1) This section---

“(a) Applies in respect of an offence against this Part that carries a penalty of a fine not exceeding \$250,000; but

“(b) Does not apply in respect of an alleged offence if an information or charge has been laid in respect of the alleged offence.

“(2) The chief executive may cause notice in writing, in the approved form, to be served on a person if the chief executive has reasonable cause to believe that---

“(a) An offence to which this section applies may have been committed by that person; and

“(b) Having regard to all the circumstances relating to the alleged offence, it is minor; and

“(c) Having regard to the previous conduct of the vessel and of that

person, it would be appropriate to impose a penalty under this section.

“(3) A notice given under subsection (2) must---

“(a) Contain---

“(i) The date and nature of the alleged offence; and

“(ii) A summary of the facts on which the allegation that an offence has been committed is based, which summary is sufficient to fully and fairly inform the person of the allegation against him or her; and

“(iii) Any other matters (other than previous convictions) that the chief executive considers relevant to the imposition of a penalty; and

“(b) Be endorsed with a statement setting out the provisions of this section and sections 113ZA to 113ZC.

“113ZA. Right to require that offence be dealt with by court---(1)

Within 28 days after a notice under section 113Z is served on a person, the person may, by a notice in writing in the approved form served on the chief executive, require that any proceedings in respect of the alleged offence be dealt with before a court.

“(2) No further proceedings may be taken under section 113ZC by the chief executive if---

“(a) A person gives notice in accordance with subsection (1); or

“(b) The person does not, within 28 days after a notice under section 113Z is served on him or her, admit the offence in accordance with section 113ZB.

“(3) Nothing in this section prevents---

“(a) The subsequent laying of an information or charge in respect of the alleged offence; or

“(b) The conviction of the person of the offence by a court; or

“(c) The imposition of a penalty under an enactment, or forfeiture under this Act, on such a conviction.

“113ZB. Admission of offence---A person on whom a notice under section 113Z is served who does not require that any proceedings in respect of the alleged offence be dealt with before a court may, by notice in writing served on the chief executive within 28 days after the notice under section 113Z is served on him or her,---

“(a) Admit the offence; and

“(b) Make submissions to the chief executive as to the matters the person wishes the chief executive to take into account in imposing a penalty under section 113ZC.

“113ZC. Amount of administrative penalty---(1) If the person admits an offence under section 113ZB, the chief executive may, after taking into account any submissions made by the person under that section, impose on that person a monetary penalty not exceeding one-third of the

maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

“(2) If the chief executive imposes a penalty on a person under this section in respect of an offence, the chief executive must cause a notice in writing, in the approved form, of the particulars of the penalty to be served on the person.

“(3) A person on whom a penalty is imposed under this section must pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on the person in accordance with subsection (2).

“(4) Despite subsection (3), a penalty that has been imposed under this section is recoverable by the Crown, from the person on whom it has been imposed, in the same manner as a fine is recoverable on summary conviction for an offence.

“(5) Despite the provisions of this Act, or any other enactment, where a person admits an offence under section 113ZB, no information or charge may be laid against that person in respect of the offence.

#### “Other Matters

“113ZD. Visits by foreign ships---(1) The master of a fishing vessel or fish carrier that is not a New Zealand ship, a New Zealand fishing vessel, or a registered fish carrier, who intends to bring the vessel into the internal waters of New Zealand, must give the chief executive at least 72 hours' notice, in the approved manner, of his or her intention to do so.

“(2) If the chief executive is satisfied that a vessel has undermined international conservation and management measures, the chief executive may, by notice to the master of a vessel to which subsection (1) applies, direct the vessel---

“(a) Not to enter the internal waters of New Zealand; or

“(b) If it has entered the internal waters of New Zealand, to leave those waters.

“(3) If the Minister is satisfied on reasonable grounds that it is necessary for the purpose of the conservation and management of fish, aquatic life, or seaweed, the Minister may, by notice in the Gazette, direct any class or classes of fishing vessel or fish carrier not to enter the internal waters of New Zealand.

“(4) The master of a vessel to which a notice under subsection (2) or subsection (3) applies, who brings the vessel into the internal waters of New Zealand knowing that the notice applies to the vessel, commits an offence and is liable to the penalty set out in section 252 (5).

“(5) This section does not prevent a vessel from entering or remaining in the internal waters of New Zealand for such period as is necessary for the purposes of obtaining the food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to a port outside New Zealand.

“113ZE. Consent of Attorney-General required for certain proceedings---(1) This section applies to proceedings for offences under the following sections:

“(a) Section 113A (illegal fishing or transportation in the fisheries jurisdiction of a foreign country):

“(b) Section 113E (unlawful use of foreign vessel on high seas by New Zealand national).

“(2) Despite anything in any other enactment, those proceedings may not be instituted in any court except with the consent of the Attorney-General and on the Attorney-General's certificate that it is expedient that the proceedings should be instituted.

Cf. 1996, No. 22, s. 27

“113ZF. Authorised agent---A document required to be served on the holder of a high seas fishing permit is deemed to have been duly served if it is---

“(a) Delivered to a representative person for the time being specified under section 103 (2) (c) or section 105 (2) (c) in relation to the vessel; or

“(b) Sent to that person by post at the address notified or last notified to the chief executive; or

“(c) Left for that person at that address.”

## 17 Persons who are required to keep records and returns

17. Persons who are required to keep records and returns---Section 189 of the principal Act is amended by adding the following paragraphs:

“(i) Holders of high seas fishing permits issued under section 113H:

“(j) Holders of exemptions granted under section 113F.”

## 18 Disposal of fish by commercial fishers

18. Disposal of fish by commercial fishers---(1) Section 191 of the principal Act is amended by inserting, before subsection (1), the following subsection:

“(1A) In this section and section 192, ‘commercial fisher’ includes a person who holds a high seas fishing permit issued under section 113H.”

(2) Section 191 (5) (c) of the principal Act is amended by adding the expression “; or”.

(3) Section 191 (5) of the principal Act is amended by adding the following paragraphs:

- “(d) Lawfully taken on the high seas and landed in any country other than New Zealand before being brought into New Zealand; or
- “(e) Lawfully taken on the high seas and transhipped in accordance with a high seas fishing permit issued under section 113H.”

## 19 Powers may be exercised outside New Zealand fisheries waters

19. Powers may be exercised outside New Zealand fisheries waters---The principal Act is amended by inserting, after section 198, the following section:

“198A. To avoid doubt, the powers of a fishery officer conferred by or under this Part may be exercised in relation to any conduct, whether or not the conduct occurred in New Zealand fisheries waters.”

## 20 Fishery officer to provide identification

20. Fishery officer to provide identification--- Section 217 of the principal Act is amended by inserting, after the word “officer” wherever it appears, the words “or high seas fishery inspector”.

## 21 Production of warrant to be sufficient authority to act

21. Production of warrant to be sufficient authority to act---The principal Act is amended by repealing section 218, and substituting the following section:

“218. The production by a fishery officer, honorary fishery officer, or examiner of a warrant issued to him or her under section 198, or the production by a high seas fishery inspector of evidence of his or her identity and of the fact that he or she is a high seas fishery inspector, is, until the contrary is proved, sufficient authority for the officer, examiner, or inspector to do any thing that he or she is authorised by this Act to do.”

## 22 Persons to assist fishery officers

22. Persons to assist fishery officers---Section 219 of the principal Act is amended by inserting, after the word “officer” wherever it appears, the words “or high seas fishery inspector”.

## 23 Protection of fishery officer from liability

23. Protection of fishery officer from liability--- (1) Section 220 (1) of the principal Act is amended by inserting, after the word ``officer", the words ``or high seas fishery inspector".

(2) Section 220 (2) of the principal Act is amended by inserting, after the expression ``section 196 (3)", the words ``or under the directions of a high seas fishery inspector under section 113Q (3)".

(3) Section 220 (3) of the principal Act is amended by inserting, after the word ``officer", the words ``or high seas fishery inspector".

(4) Section 220 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

``(4) The Crown may not be held directly or indirectly liable for an act or omission of any such fishery officer, high seas fishery inspector, or person, unless the officer, inspector, or person would himself or herself incur liability for the act or omission."

## 24 Complaints against fishery officers

24. Complaints against fishery officers--- (1) Section 221 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

``(1) A person may lodge a complaint in writing with the chief executive if the person believes that a fishery officer or a high seas fishery inspector is guilty of misconduct or neglect of duty in the exercise, or alleged exercise, of---

``(a) A power conferred on fishery officers by this Part; or

``(b) Any other powers conferred on high seas fishery inspectors by Part 6A."

(2) Section 221 of the principal Act is amended by inserting, after the word ``officer" wherever it appears in subsections (3) and (4), the words ``or high seas fishery inspector".

(3) Section 221 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

``(5) The chief executive must, after receiving the investigator's report and after giving the fishery officer or high seas fishery inspector concerned the opportunity to comment on it,---

``(a) Decide whether the complaint should be upheld in whole or in part; and

``(b) Notify the fishery officer, or high seas fishery inspector, and the complainant of the chief executive's decision."

## 25 Penalties

25. Penalties---(1) Section 252 (3) of the principal Act is amended by inserting, after paragraph (h), the following paragraphs:

“(ha) Section 113A (2) (unlawfully taking fish in foreign fishing jurisdiction):

“(hb) Section 113D (5) (unlawfully taking fish on high seas):

“(hc) Section 113E (3) (unlawful use of foreign vessel on high seas by New Zealand national):

“(hd) Section 113W (4) (failing to co-operate with foreign high seas inspector):”.

(2) Section 252 (5) of the principal Act is amended by inserting, after paragraph (ha), the following paragraphs:

“(hb) Section 113J (2) (breach of condition on high seas fishing permit):

“(hc) Section 113L (2) (failing to carry high seas fishing permit on vessel):

“(hd) Section 113ZD (4) (bringing a foreign ship into internal waters of New Zealand when prohibited):”.

(3) Section 252 (6) is amended by inserting, before paragraph (a), the following paragraph:

“(aa) Section 113M (2) (failure by holder of high seas fishing permit to notify chief executive of change of vessel's ownership or operator):”.

## 26 General regulations

26. General regulations---(1) Section 297 (1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) Requiring the installation and maintenance of equipment to monitor fishing or transportation and the payment of any associated prescribed fees and charges:”.

(2) Section 297 (1) of the principal Act is amended by inserting, after paragraph (o), the following paragraph:

“(oa) Implementing or giving effect to provisional measures of an international court or tribunal:”.

(3) Section 297 (1) (s) of the principal Act is amended by inserting, after the words “Permit Register”, the words “the High Seas Permit Register,”.

(4) Section 297 is amended by repealing subsection (3), and substituting the following subsection:

“(3) Without limiting anything in this section or section 299 (1), regulations made under this section may apply in respect of---  
“(a) Fishing to which Part V applies; and  
“(b) New Zealand nationals and New Zealand ships when they are outside New Zealand fisheries waters.”

## 27 Amendments to update Schedule 1A

27. Amendments to update Schedule 1A---The principal Act is amended by inserting, after section 299, the following section:

“299A. (1) The Governor-General may from time to time, by Order in Council,---

“(a) Amend Schedule 1A by making amendments to the text of the Fish Stocks Agreement set out in that schedule that are required to bring the text up to date:

“(b) Revoke Schedule 1A, and substitute a new schedule setting out, in an up-to-date form, the text of the Fish Stocks Agreement.

“(2) An order made under subsection (1) is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.”

## 28 General provisions as to regulations

28. General provisions as to regulations---Section 302 (1) of the principal Act is amended by inserting, after the word “waters”, the words “, generally throughout the high seas,”.

## 29 Transitional provisions relating to registration of vessels where consent required under section 57

(8) of Fisheries Act 1983

29. Transitional provisions relating to registration of vessels where consent required under section 57 (8) of Fisheries Act 1983---Section 332 (4) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) The previous offending history (if any), in relation to fishing or transportation (whether within the national fisheries jurisdiction of New Zealand or another country, or on the high seas), of the vessel's owner, operator, foreign charterparty, notified user, master, or crew; and”.

## 30 Transitional period for registration of mortgages

30. Transitional period for registration of mortgages---Section 350

(2) (b) of the principal Act is amended by omitting the expression ``6 months'', and substituting the expression ``3 months''.

### 31 Transitional offences and penalties

31. Transitional offences and penalties---(1) Section 361 (1) of the principal Act is amended by inserting, after the expression ``section 16 (6)'' where it first appears, the words ``or any provision of Part 6A''.

(2) Section 361 (1) (a) of the principal Act is amended by inserting, after the expression ``section 16 (6)'', the words ``or section 113J (2) or section 113L (2) or section 113ZD (4)''.

(3) Section 361 (1) (b) of the principal Act is amended by inserting, after the expression ``section 121 (3)'', the words ``or section 113M (2)''.

(4) Section 361 (1) (d) of the principal Act (as amended by section 79 of the Fisheries Act 1996 Amendment Act 1999) is amended by inserting, after the word ``against'', the words ``section 113A (2) or section 113D (5) or section 113E (3) or section 113W (4)''.

### 32 Allocation of quota

32. Allocation of quota---Section 363 of the principal Act is amended by adding the following subsection:

``(4) Despite section 53 (1), in relation to every person to whom this section applies and is entitled to receive a transfer of individual transferable quota under section 52, the chief executive must---

``(a) Calculate the percentage of the total allowable commercial catch the person would have received under section 47 if he or she (and all other persons whose provisional catch history has since been altered) had owned the revised amount of provisional catch history on the date on which quota was allocated for that stock under section 47; and

``(b) Allocate the quota weight equivalent of the percentage calculated under paragraph (a) based on the total allowable commercial catch notified for that stock at the close of the last day of the fishing year in which section 52 applies."

### 33 Further provisions relating to allocation of quota

33. Further provisions relating to allocation of quota---Section 364 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) On and from 30 September 1999, the provisions of sections 28S and 28W of the Fisheries Act 1983 apply to quota variations made in accordance with sections 52 and 53 of this Act as if those variations were variations to which sections 28OD and 28OE of the Fisheries Act 1983 related.”

#### 34 New schedule inserted

34. New schedule inserted---The principal Act is amended by inserting, before the First Schedule, the Schedule 1A set out in the Schedule of this Act.

#### 35 Sixth Schedule amended

35. Sixth Schedule amended---The Sixth Schedule of the principal Act is amended by adding, in the appropriate columns, the following item:

|  |  |  |
|--|--|--|
| “Freshwater eel<br>( <i>Anguilla</i><br><i>australis</i> ,<br><i>Anguilla</i><br><i>dieffenbachii</i> , and<br><i>Anguilla</i><br><i>reinhardtii</i> ) | All New Zealand<br>fisher-<br>ies waters | A commercial<br>fisher may return<br>any freshwater eel<br>of legal size to<br>the waters from<br>which it is taken<br>if--- |
|--|--|--|

(a) That eel is  
likely to survive  
on return; and

(b) The return  
takes place as  
soon as  
practicable after  
the eel is  
taken.”

#### 36 Revocation of notice relating to scampi

36. Revocation of notice relating to scampi---The following provisions of the Fisheries (Declaration of New Stock Subject to Quota Management System) Notice 1997 (S.R. 1997/279) are revoked:

(a) Clauses 2 (b) and 3 (3):

(b) So much of the Schedule as relates to scampi.

SCHEDULE: NEW SCHEDULE 1a

## SCHEDULE

### Section 34

## NEW SCHEDULE 1A OF PRINCIPAL ACT

### ``SCHEDULE 1A

#### Section 2 (1)

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

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

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

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant

provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

## PART I

### GENERAL PROVISIONS

#### Article 1

##### Use of terms and scope

1. For the purposes of this Agreement:
  - (a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
  - (b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;
  - (c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and
  - (d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.
2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.
  - (b) This Agreement applies mutatis mutandis:
    - (i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and
    - (ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent ``States Parties" refers to those entities.

3. This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.

## Article 2

### Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

## Article 3

### Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.
2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in article 5.
3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies *mutatis mutandis* in respect of areas under national jurisdiction.

## Article 4

### Relationship between this Agreement and the Convention

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

## PART II

# CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

## Article 5

### General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- (c) apply the precautionary approach in accordance with article 6;
- (d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- (e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- (f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (g) protect biodiversity in the marine environment;

- (h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (i) take into account the interests of artisanal and subsistence fishers;
- (j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;
- (k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- (l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

## Article 6

### Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.
2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
3. In implementing the precautionary approach, States shall:
  - (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
  - (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
  - (c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and

distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

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

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.

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

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

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

## Article 7

### Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

- (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;
- (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

- (a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
- (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
- (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

- (e) take into account the respective dependence of the coastal States and States fishing on the high seas on the stocks concerned; and
  - (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.
3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.
4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.
5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.
6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.
7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.
8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

### PART III

#### MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH

## STOCKS AND HIGHLY MIGRATORY FISH STOCKS

### Article 8

#### Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.
2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.
3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.
4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.
5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for

such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management for such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

## Article 9

### Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

- (a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;
- (b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;
- (c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and
- (d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

## Article 10

## Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

- (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;
- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and

- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

## Article 11

### New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

## Article 12

### Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.
2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the

procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

### Article 13

#### Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

### Article 14

#### Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:
  - (a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks, and highly migratory fish stocks;
  - (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and
  - (c) take appropriate measures to verify the accuracy of such data.
2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:
  - (a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and
  - (b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

#### Article 15

##### Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

#### Article 16

##### Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree

on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

## PART IV

### NON-MEMBERS AND NON-PARTICIPANTS

#### Article 17

##### Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.
2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.
3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.
4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management

measures.

## PART V

### DUTIES OF THE FLAG STATE

#### Article 18

##### Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.
2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.
3. Measures to be taken by a State in respect of vessels flying its flag shall include:
  - (a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
  - (b) establishment of regulations:
    - (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;
    - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
    - (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and
    - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
  - (c) establishment of national record of fishing vessels authorized

to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

- (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
- (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
- (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;
- (g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:
  - (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
  - (ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and
  - (iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;
- (h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and
- (i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed

at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

## PART VI

### COMPLIANCE AND ENFORCEMENT

#### Article 19

##### Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

- (a) enforce such measures irrespective of where violations occur;
- (b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
- (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
- (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and
- (e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to

discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

## Article 20

### International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.
3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.
4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.
6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

## Article 21

### Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and

identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

- (a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or
- (b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant

organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

- (a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);
- (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;
- (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;
- (d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is

under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

## Article 22

### Basic procedures for boarding and inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized

inspectors:

- (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
- (b) initiate notice to the flag State at the time of the boarding and inspection;
- (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
- (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
- (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
- (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

- (a) accept and facilitate prompt and safe boarding by the inspectors;
- (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
- (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
- (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
- (e) provide reasonable facilities, including, where appropriate,

food and accommodation, to the inspectors; and

(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

## Article 23

### Measures taken by a port State

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

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

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

## PART VII

### REQUIREMENTS OF DEVELOPING STATES

## Article 24

### Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of

straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

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

- (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

## Article 25

### Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:

- (a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;
- (b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and
- (c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.
3. Such assistance shall, inter alia, be directed specifically towards:
  - (a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;
  - (b) stock assessment and scientific research; and
  - (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

## Article 26

### Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

## PART VIII

### PEACEFUL SETTLEMENT OF DISPUTES

## Article 27

### Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

## Article 28

## Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

## Article 29

### Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

## Article 30

### Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part.

Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

### Article 31

#### Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.
2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.
3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

### Article 32

#### Limitations on applicability of procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

## PART IX

## NON-PARTIES TO THIS AGREEMENT

### Article 33

#### Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.
2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

## PART X

### GOOD FAITH AND ABUSE OF RIGHTS

#### Article 34

#### Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

## PART XI

### RESPONSIBILITY AND LIABILITY

#### Article 35

#### Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

## PART XII

### REVIEW CONFERENCE

#### Article 36

#### Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly

migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

## PART XIII

### FINAL PROVISIONS

#### Article 37

##### Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2 (b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

#### Article 38

##### Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2 (b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 39

##### Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2 (b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article 40

##### Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

#### Article 41

##### Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

#### Article 42

##### Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

#### Article 43

##### Declarations and statements

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

#### Article 44

##### Relation to other agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable

solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

## Article 45

### Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

- (a) be considered as a Party to this Agreement as so amended; and
- (b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

#### Article 46

##### Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

#### Article 47

##### Participation by international organizations

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

- (a) article 2, first sentence; and
- (b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

- (a) at the time of signature or accession, such international

organization shall make a declaration stating:

- (i) that it has competence over all the matters governed by this Agreement;
  - (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
  - (iii) that it accepts the rights and obligations of States under this Agreement;
- (b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;
- (c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

#### Article 48

#### Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.
2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

#### Article 49

#### Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

#### Article 50

## Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

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

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

## ANNEX I

### STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA

#### Article 1

##### General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

#### Article 2

##### Principles of data collection, compilation and exchange

The following general principles should be considered in defining

the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

- (a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;
- (b) States should ensure that fishery data are verified through an appropriate system;
- (c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;
- (d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;
- (e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and
- (f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

### Article 3

#### Basic fishery data

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery.  
[Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
- (c) discard statistics, including estimates where necessary, reported as a number or nominal weight by species, as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method; and
- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and
- (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

#### Article 4

##### Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and

- (d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fixing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

## Article 5

### Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

## Article 6

### Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling.

## Article 7

### Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available

in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

## ANNEX II

### GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.
2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.
3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.
4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.
5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.