



**Promoting Sustainable  
Fisheries Conservation and Management**

A Handbook for  
**Negotiating**  
Fishing Access  
Agreements

**Will Martin  
Michael Lodge  
John Caddy  
Kwame Mfodwo**





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# FOREWORD

**T**he following Model Fishing Access Handbook is offered by the authors and World Wildlife Fund to coastal States and distant water fishing States interested in the sustainable development and conservation of marine fisheries resources in coastal State exclusive economic zones and adjacent high seas areas. The handbook is intended for use by parties in the negotiation of bilateral and regional fishing access arrangements in developing State EEZ's.

World Wildlife Fund believes that promoting sustainability in the context of fishing access arrangements is essential to the protection of the biological diversity of the world's oceans. To this end, in 1998 WWF published a series of papers entitled, "The Footprint of Distant Water Fleets on World Fisheries". One of the issues enumerated in those papers was the concern that fishing access agreements need to be negotiated with a clear understanding of both the coastal States and distant water fishing nations that they are required to meet certain international legal norms. In order to effectively address this issue, WWF envisioned a collaborative discussion of knowledgeable individuals with an eye to providing their insights, knowledge and advice to parties interested in the incorporation of these international norms in their negotiations.

Accordingly, WWF sought the involvement of several internationally recognized experts in the field of fisheries management and conservation. WWF invited Will Martin, Michael Lodge, John Caddy and Kwame Mfodwo to attend an initial three day meeting in Rome, Italy in November, 1999 to discuss their views on the key principles necessary to promote the sustainable development of conservation oriented fisheries access arrangements. Will Martin, Senior Fellow with World Wildlife Fund, served as the meeting chair. At that meeting the authors agreed on a set of principles for such arrangements. Following that meeting and over the year, the authors collectively drafted the provisions of this handbook with Will Martin serving as executive editor. The principles,

model texts and discussions represent the results of the authors' collaboration and the collective opinions of the authors. WWF offers this handbook with the sincere hope of promoting the collaboration among coastal states and distant water fishing nations for the sustainable development and conservation of the world's fisheries resources. Following is a brief biographical background on each co-author.

## Biographical data of authors

**Will Martin** is an American lawyer and business executive. He also is a Senior Fellow for World Wildlife Fund. From 1993-98, he served as Deputy Assistant Secretary for International Affairs at the U.S. National Oceanic and Atmospheric Administration. From 1997-99, he was Chairman of the Committee on Fisheries (COFI) of the United Nations Food and Agriculture Organization in Rome.

**Michael W. Lodge** is the Head of the Office of Legal Affairs of the International Seabed Authority. In this capacity he also serves as Secretary of the Authority's Council and Legal and Technical Commission. From 1991 to 1995 he was Legal Counsel for the South Pacific Forum Fisheries Agency and was the legal adviser to the 16 member States of the Agency throughout the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. He also participated in the negotiation of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the FAO Code of Conduct for Responsible Fisheries. From 1993 to 2000, he was the Secretary of the Multilateral High Level Conference on Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific. He has worked as a consultant on law of the sea and fisheries for governments and the private sector in the South Pacific, Caribbean, UK and Eastern Europe as well as for FAO. He is a Barrister of Gray's Inn, London and also holds an MSc. in Marine Policy from the London School of Economics.

**John F. Caddy** PhD is a scientific advisor with long experience on a wide range of national and international issues related to marine fishery resources and their proper management, with various arms of government, research institutes, universities, and the private sector. Prior to joining FAO where he

recently occupied the post of Chief of Marine Resources, he occupied positions of increasing seniority in the Canadian Department of Fisheries and Oceans. Currently he is a senior research fellow at the University of London, England, and visiting professor at the Centro de Investigacion y de Estudios Avanzados, Merida, Mexico.

While in FAO, he specialized in finding practical solutions to fishery management issues with an emphasis on interdisciplinary problem solving. He played a key supportive role in important global initiatives such as UNCED, the UN Fish Stock Agreement, and in steering Article 7 of the Code of Conduct through to international agreement and guided work on the accompanying Fisheries Management Guidelines. He has published more than 100 papers and reports on a wide variety of technical issues related to fisheries.

**Kwame Mfodwo** (LL.B Hons (Ghana); M. IntLaw (ANU) (Australia) is currently a lecturer in law at Monash University Law School in Melbourne Australia. He teaches and undertakes consultancy work related to fisheries, natural resources, environmental management, European Union law and international law. He has a wide experience of work in Africa, the South Pacific, New Zealand and Australia and has undertaken work for the Pew Charitable Trusts, the Packard Foundation, Social Alert (Belgium) and various governments in Africa and Oceania.

World Wildlife Fund greatly appreciates the efforts of all the authors for their work in the development of this handbook.

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# INTRODUCTION

## Historical Context

**H**istorically, fishing fleets of distant water fishing nations (DWFNs) operated in the coastal waters of other nations without effective coastal State or international regulation. During the 1970s, however, as a result of the widespread adoption by coastal States of 200 nautical mile exclusive economic zones (EEZs), the fisheries resources of large areas of the ocean became subject to the jurisdiction of coastal States. The 1982 United Nations Convention on the Law of the Sea (“the 1982 Convention”) granted coastal States sovereign rights over the fisheries resources within their respective EEZs and, as a result, DWFNs were forced to negotiate with coastal States for access to surplus fishery resources. In some regions of the world, such as West Africa and the South Pacific, fishing by distant water fleets under bilateral access agreements accounts for the vast majority of the fishing within their EEZs. These bilateral access agreements have often failed to provide an adequate framework for achieving sustainable fisheries management in the coastal State fisheries in question.

Article 62 of the 1982 Convention grants wide-ranging powers to the coastal State to establish terms and conditions for access. However, as a result of increasing pressure on fisheries worldwide, a number of international agreements developed during the past decade have significantly enhanced the obligations for conservation and management of fisheries for both coastal States and DWFNs. These agreements include the 1995 FAO Code of Conduct for Responsible Fisheries, the FAO Compliance Agreement, and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA).

The UNFSA, as its long title suggests, consolidates and elaborates upon certain provisions of the 1982 Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. The Agreement prescribes the mechanisms for international cooperation between coastal States and States fishing on the high seas in order to achieve long-term sustainability of highly migratory fisheries resources and stocks that straddle the high seas and EEZs. In addition, however, it also establishes minimum standards which are applicable not only to fishing for straddling and highly migratory stocks on the high seas but also to fishing for all fish stocks under the jurisdiction of the coastal State. It is important that the standards established by such international agreements should be reflected in any bilateral access agreement.

It should be noted that in some areas, minimum standards for fisheries access have also been established at the regional level, for example in the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, 1982, under which seven Pacific island States have harmonized their requirements for access agreements. Although such standards may not be binding on distant water fleets, even within the region, they clearly constitute “best practice” models.

## Key Principles

In general, the authors believe the key principles for sustainable access agreements are as follows. Fishing access should only be granted under the auspices of a fully developed fisheries management plan. These key principles are important in a sustainable access agreement and related management plan:

- The total catch permitted to a distant water fleet as well as the total fishing capacity of that fleet under an access agreement should be consistent with a sustainable level of fishing, based on a clear scientific assessment of the state of stocks.
- Arrangements for access should ensure that the distant water fleet assumes its proportionate share of the environmental costs of sustainable fishing in the fisheries for which access has been granted.
- The interests of small-scale, artisanal fishers of the coastal State should be protected.
- The flag State should take such action as may be necessary to ensure that its flag vessels comply with the fisheries laws and regulations of the coastal State, including prosecution and appropriate punishment under its own domestic laws for serious violations.
- The distant water fleet should cooperate with the coastal State in carrying out scientific research on the status of stocks and should undertake to collect and report in an accurate and timely manner data on catch and effort.
- The coastal State should ensure, directly or through third parties, that its monitoring, control and surveillance capabilities are adequate to enforce its fisheries laws and regulations.
- The terms and conditions for fishing under access arrangements should be based on best fisheries management practices.
- The negotiation of and terms and conditions of access agreements should be transparent.
- Before an access agreement is renewed, the parties should conduct a thorough review of the status of the fishery resources concerned.

## **Reducing Risks to Resource Sustainability in Fishing Access Agreements**

The model fishing access agreements presented in this document suggest specific provisions to be included in actual access agreements in order to increase the chances that the coastal State's fisheries resources are not depleted by over-fishing. Before planning the negotiation or re-negotiation of a fisheries access agreement, however, it is useful to bear in mind some key considerations for

achieving the goal of resource sustainability in a fishery subject to fishing by a distant water fishing fleet. This section offers some thoughts on ways that coastal State fisheries managers can reduce the risks to the resource in negotiating access agreements.

Negotiating fishing access rights should be regarded by the coastal State as an integral part of its fishery management regime. Granting fishing rights to a distant water fishing fleet does not differ fundamentally from a decision to expand the domestic fleet. In either case, such an expansion ought to be based on clear evidence that the resource is underutilized and hence that a surplus can safely be exploited.

Unfortunately, coastal States have often granted access rights with little or no knowledge of the state of the stocks. Although fisheries authorities presumably would not want to negotiate foreign access rights that deplete stocks or penalize national fleets, in many cases this has been precisely the result of such decisions. Moreover, this situation is often exacerbated by lax enforcement by the coastal State. The cost to nationals of the coastal State has been a reduced rate of catch which is an almost inevitable consequence of increased fishing effort in an already fully exploited or overexploited fishery. Even if the current level of harvest by nationals is maintained, a reduced catch rate would mean that the share of the catch by nationals is taken with greater effort and at higher cost.

The decision to negotiate fishing access rights should be made only very carefully, therefore, and only on the basis of adequate data and analysis. The data and analysis must reveal a surplus in the fishery in question. Ideally, this decision should involve a sequence of specific management steps that begins with collection and analysis of biological, landing, survey and economic data aimed at determining the status of the resources and fishery, as well as the impact of current levels of harvesting on the resource and on the coastal communities that depend on it. If there is any doubt that the fishery is not currently being harvested at below MSY, then offering access is not to be recommended. This analysis, in addition to providing an estimate of stock status, should also aim to define limit reference points that should not be exceeded if an access agreement is implemented. Limit reference points could be defined as a minimum biomass level that should be maintained or a catch rate that should not be exceeded.

In order to ensure that limit reference points are determined in accordance with the precautionary approach embodied in the UNFSA, it is highly desirable that the analysis includes an estimate of the variance around the biomass level or catch rate used as limit reference points. That estimate of variance will allow the fisheries authority to determine the probability that a given target reference point (i.e. total allowable catch) will result in exceeding the limit reference point. Where such an estimate of variance is not possible, worst case scenarios should be considered, including the appropriate response if such scenarios were to be realized.

When the limit reference points are exceeded, fishing should cease. When the precautionary reference points (the variance mentioned above around the limit reference points) are reached, pre-agreed specific management measures, such as reductions in TAC, capacity or effort, or a combination, would be initiated.

The analysis of the fishery's yield is extremely important to decision-making by coastal States about foreign access. If countries do not have the necessary analytical expertise to do such an analysis, some of the revenues from compensation or access fees should be set aside to finance the analysis on a contractual basis, by independent foreign experts, if necessary. If the DWFN seeking access were to do such an analysis without a review procedure involving neutral foreign experts, there would be an obvious danger of serious bias in the analysis.

If the coastal State decides that it is safe to authorize fishing access, the overall fishery management plan should take into account not only likely national and DWFN catches within the zone but harvesting of the same stocks outside the national zone. All catches of the shared stock, a highly migratory stock or a straddling stock, should be incorporated within a cooperative management framework through a regional or sub-regional agreement.

To protect fisheries where stock size is subject to major fluctuations, as in the case of fisheries for small pelagic resources, coastal States could negotiate a two-tier access right: the first tier would consist of an allocation for the duration of the agreement, and would be set at a level that, in combination with catches by the national fleet, would be unlikely to cause limit reference points to be exceeded, even in poor recruitment years. The second tier of catches would be allocated annually either to national or DWFN fleets on the basis of a survey or annual stock estimate at the start of the season.

Fishing access agreements should provide for adjustments in the permitted catch or effort over the duration of the agreement. Coastal States should recognize that taking all the financial compensation up front constrains their ability to make the future adjustments in permitted catch or effort necessary to the sustainability of the resource. To provide the needed adjustments in permitted catch, coastal States must be willing to accept concomitant adjustment in compensation levels during the term of the agreement.

Calculating access rights, either in terms of vessels, effort, or total allowable catch (TAC) is a difficult issue. Many coastal States are not yet prepared to deal with the administration of a TAC. A ceiling on effort could be used to supplement a catch quota where the latter cannot be adequately monitored. On the other hand, allocating rights on the basis of total vessel numbers or tonnage fails to reflect constant increases in actual catching capacity of the fleet because of technological improvements. Approaches to measuring capacity that take account of vessel characteristics pose difficult technical problems of calibrating the fishing power of national and distant water fleets. Nevertheless coastal States could calculate access rights in terms of capacity measured by both vessel numbers and characteristics as well as effort, measured by fishing days. The use of telemetry systems to control time and location of fishing has been successfully applied in the Southern Hemisphere and it also saves some funds that can be used for improving the monitoring, control and surveillance system.

Decisions on access provided to DWFN fleets must be made with their impacts on national fleets and artisanal fishers in mind. In determining what restrictions should be imposed on fishing operations under a bilateral access agreement, the coastal State should take into account the following points:

- The fishing zones should be areas in which the fish stock components are not the primary targets of national fleets.
- Distant water fleets should not be allowed to fish for offshore components of stocks on which inshore artisanal fishers depend for a livelihood.
- Emphasis should be given to deepwater species, and species for which local markets do not exist or which require special processing techniques or gear that are not locally available.

- If the quality of some fish species caught by the national fleet primarily for export reduces the net price and marketability of the resource, a share of the catch could be allocated to the DWFN.

Without the necessary analysis to ensure that the coastal State has a surplus that it can share with a distant water fleet, as well as the adoption of conscious strategies for minimizing risks to the resource, bilateral fishing access agreements can result in the serious depletion of fish stocks and even irreversible damage to the marine ecosystem.

This brief introductory essay has suggested some essential principles for making decisions on access agreements in such a way as to maintain resource sustainability. The commentary and proposed model texts that follow provide a more comprehensive checklist of issues and possible responses in the negotiation of fishing access agreements.





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# ESSENTIAL ELEMENTS IN ACCESS AGREEMENTS

## Access Authorization

**U**nder article 56 of the 1982 Convention, the coastal State has sovereign rights in the EEZ for the purpose of exploring and exploiting, conserving and managing the marine living resources. Every access agreement should therefore contain a basic provision giving recognition to the sovereign rights of the coastal State and expressly stating that the coastal State is willing to allow access to the DWFN in exercise of its sovereign rights. Usually, in accordance with article 62 of the Convention, such a provision will also make reference to the determination by the coastal State of the TAC within the EEZ, the determination of its own capacity to harvest the TAC and the allocation of the surplus TAC. Such a provision sets the basis for the grant of access to the DWFN and is a useful reminder of the issues that must be considered prior to the decision to permit access. These issues are outlined more fully above in Section 1 in the subsection entitled Reducing Risks to Sustainability in Fishing Access Agreements.

In the case of access agreements entered into at the industry level, it is suggested that the agreement also include a clause under which the

company or industry association concerned explicitly recognizes and accepts the jurisdiction of the coastal State over the marine living resources in the EEZ.

It is important that access should not be permitted in a manner which undermines existing regional or subregional arrangements for conservation and management. Such arrangements are likely to assume increasing importance as a result of the UNFSA. In some regions, for example the South Pacific, coastal States have made a commitment not to grant access to foreign fishing vessels except in accordance with regionally-agreed minimum terms and conditions of access, which include entry on a regional register of foreign fishing vessels. Where such conditions apply, they should be referred to in any bilateral access agreement so that it is clearly understood that compliance with the regional standards is a condition precedent to the grant of access.

### ***Relevant International Legal Norms***

- UN Food & Agricultural Organization, Code of Conduct for Responsible Fisheries, Article 7.6.2 (October 31, 1995), reprinted at <http://www.fao.org/fi/agreem/codecond/ficonde.asp> [hereinafter the 1995 FAO Code of Conduct]:

*States should adopt measures to ensure that no vessel be allowed to fish unless so authorized, in a manner consistent with international law for the high seas or in conformity with national legislation within areas of national legislation.*

- 1995 FAO Code of Conduct, *supra*, Article 8.1.1:

*States should ensure that only fishing operations allowed by them are conducted within waters under their jurisdiction...*

- Declaration of the UN Conference on Environment and Development, G.A. Resolution No. 47/190 (1992), UN Doc.A/CONF.15/126, Principle 2 (June 13, 1992) [hereinafter the 1992 Rio Declaration on Environment and Development]:

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their*

*jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

- Declaration of the United Nations Conference on the Human Environment, UN Doc. A/Conf.48/14/REV.1, at Principle 21 (1972) [hereinafter the 1972 Stockholm Declaration on the Human Environment]:

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

- Convention on Biological Diversity, U.N. Doc. DPI/130/7, at Article 3 (1992) [hereinafter the 1992 Convention on Biological Diversity].

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

- General Assembly Resolution on Sovereignty, G.A. Resolution No. 2158 (XXI) (1966), Article 1:

*Reaffirms the inalienable right of all countries to exercise permanent sovereignty over their natural resources in the interest of their national development...*

- General Assembly Resolution on Sovereignty, *supra*, at Article 4:

*Confirms that the exploitation of natural resources in each country shall always be conducted in accordance with its national laws and regulations.*

## Payments

DWFNs and their associated fleets have been making payments to coastal States in return for access to fishing opportunities for quite some time. Article 62 (4) of the 1982 Convention permits coastal States to ask for a range of compensation types in return for granting access. Financial payments, development projects, technical assistance, assistance with research into the status of the resources are all permitted types of payments under the 1982 Convention.

There are, however, other types of agreements which do not envisage payments in return for access to fishing opportunities. Reciprocal access agreements and framework agreements for setting up joint ventures are of this type. Although still important in international fisheries relations, these agreement types are now much less important than “compensation for access” agreements.

In practice, access payments fall into two types: (1) payments made by the DWFN to the coastal State (State to State payments) and (2) payments made by the distant water fleet through an association or by individual boats/companies to the coastal State (enterprise-to-State payments.)

Enterprise-to-State payments are usually made in the form of license and other fees. These payments are a mixture of resource rents, royalties and administrative fees paid in relation to licenses.

Coastal States have certainly come to view access payments as evidence of respect for their sovereignty, i.e. in return for conceding access to the zone the coastal State receives payments in various forms.

The economic aspect of payments by States for fisheries access has recently assumed a complex and controversial character, with current international debate questioning whether State-to-State payments are in reality a form of subsidy, despite the legal rationale advanced for their pervasive presence. The majority view, and the one we agree with, is that State-to-State payments are indeed a form of subsidy to the distant water fleet. While not all fisheries subsidies have negative implications, most are far from good. A recent World Bank study suggests that at most 5% of all fisheries subsidies have a positive environmental aim. By encouraging overfishing and dependence on public support, subsidy regimes have the potential to produce very unsustainable results. The story of the public subsidization for generations of fishermen in the Newfoundland cod fishery and its subsequent collapse is testament to the pitfalls of fisheries subsidies. Because State-to-State payments often represent

a subsidy, they violate the principles, included in Agenda 21, that States should move toward full-cost pricing of goods. In the medium term we would strongly urge both DWFNs and coastal States to consider the phasing out of State-to-State payments, and in the long term, to eliminate them altogether. Enterprise-to-State payments would replace State-to-State payments, thus placing the cost of access on the distant water fleet.

However, should this policy be followed, a dilemma arises with respect to many of the poorer countries, some of which depend substantially or completely on access payments as their principal source of convertible currency (e.g. Kiribati, Senegal, Seychelles). While State-to-State payments can, more or less, be relied upon as a predictable source of income, enterprise-to-State payments are much more likely to fluctuate and in some years, might not even eventuate, depending upon the productivity of the fishery.

Despite these difficulties, the use of State-to-State payments continues to present the potential for irrational economic incentives to increase fishing and not reflect the costs associated with this increased fishing effort. Many distant water fleets are unable to meet the full costs of the access fee required by the coastal State plus the actual costs of their operations. In many cases, without State-to-State payments, current distant water operations would become seriously uneconomical or could only be undertaken by a much reduced number of vessels. A beneficial effect of reducing excess capacity would then follow.

Another difficult issue relates to the actual *use* of payments by the coastal State. From the point of view of sovereignty and sovereign rights, coastal States are free to use monies received for a range of purposes. However, there is an increasing consensus that in order to better meet the coastal State obligations under international law to conserve marine resources within their jurisdiction, it would be appropriate for coastal States to use an adequate proportion of access payments to address matters which support conservation (e.g. stock assessments, monitoring, control and surveillance (MCS), periodic review of ecological impacts of fishing, training and upgrading fisheries management capacity).

In the medium-term, we would strongly urge both coastal States and DWFNs to consider the phasing-out of State-to-State payments. In the short-term, we recognize the difficulties faced by many coastal States and would therefore recommend that a number of interim measures be considered. One approach would be to ensure that compensation is re-calculated annually to reflect changes in allowable catch and fleet capacity.

Indeed there is a well established trend in the EU-African agreements for notable proportions (15-37% is the range in recent agreements) of access payments to be used to support research and training. Verification procedures are implemented by the EU to assess whether such funds have in fact been used for the purpose earmarked.

We would support and encourage this trend to specifically use a significant proportion of access payments for conservation and fisheries management purposes.

### ***Relevant International Legal Norms***

- Report of the UN Conference on Environment and Development, U.N. Doc. A/Conf.151/26/Rev.1, 1992, Vols. I-III, at Para. 2.14 [hereinafter the 1992 Agenda 21]:

*The following policies should be adopted by developing countries with respect to commodities consistent with market efficiency: ...*

*(c) Reflect efficient and sustainable use of factors of production in the formation of commodity prices including the reflection of environmental, social and resources costs.*

- 1992 Agenda 21, *supra*, at Para 8.31(b):

*States should move more fully toward integration of social and environmental costs into economic activities, so that prices will appropriately reflect scarcity and total value of resources and contribute towards the prevention of environmental degradation.*

- 1992 Agenda 21, *supra*, at Para. 30.3:

*A positive contribution of business and industry, including transnational corporations, to sustainable development can increasingly be achieved by using economic instruments such as free market mechanisms in which the prices of goods and services should increasingly reflect the environmental costs of their input, production, use, recycling and disposal subject to country-specific conditions.*

- 1992 Convention on Biological Diversity, *supra* at Article 11:

*Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.*

■ 1992 Rio Declaration on Environment and Development, *supra* at Principle 16:

*National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.*

## Best Fisheries Management Practices

### Catch and Effort Restrictions

Regardless of its form, every access agreement should contain appropriate provisions to restrict the catch to levels that do not result in overfishing the resource. This is a fundamental principle of fisheries conservation.

The means of limiting the catch to sustainable levels will vary depending upon the capabilities and management approaches of the respective coastal States. In some cases, States will limit the total allowable catch (TAC) of the fleet to assure that limit reference points are not exceeded. In other cases, States will use a more indirect method (limiting the capacity and effort of the fleet), in order to assure that overfishing does not occur. Both approaches have their shortcomings from the perspective of conservation: a TAC directly focuses on the catch but ignores the issue of capacity; a capacity and effort restriction is indirect and may fail effectively to limit the catch to the limit reference point.

In our models, we suggest an approach that blends a TAC with a restriction on capacity (see, e.g. Article 6 of Model Number One). In addition, our models contain provisions to adjust the TAC and the allowed capacity on an annual basis.

We suggest that in fisheries where fish stocks are subject to greater fluctuations, coastal States could set fishing rights to the distant water fleet at more conservative levels to ensure against poor recruitment years. It could then grant more liberal access rights on an annual basis, depending on the annual stock estimate.

Some current access agreements use an additional indirect approach: allowing either party to mandate, from time to time, a “biological rest period”

for the resource, and we think this tool is useful as a supplement to catch and effort restrictions, though not a substitute for such restrictions. (See Article 7 of Model Number One).

Capacity decisions on how much tonnage or how many vessels or effort to authorize in a given fishery should be based on the calculation of the total catching power that is consistent with a sustainable level of catch in each fishery. It should be noted that technological improvements in fishing vessels increase substantially the total fishing capacity of a given fleet in a particular fishery over time, even if the number of vessels remains constant. This suggests that the coastal State needs to review and make reductions in the number of vessels allowed access to the fishery from time to time, based on actual increases in capacity that have taken place, in order to avoid exceeding a level of capacity commensurate with a sustainable level of catch. Nevertheless distant water fleets have often been permitted access for the same fleet tonnage year after year, despite the fact that the fishery was already being fully exploited. Our approach calls for annual review and adjustment.

International legal norms created by recent global agreements on fisheries management require that limits on fishing be established as appropriate, in order to ensure that fishery resources are not overexploited and depleted. The Code of Conduct calls for States to ensure that they permit only as much fishing as is “commensurate with the state of fisheries resources” (Article 7.6.1) and for mechanisms to reduce capacity to sustainable levels where it is excessive and monitoring the level of capacity of (Article 7.6.3). The UNFSA requires States to adopt “conservation and management measures to ensure long-term sustainability and promote optimum utilization of straddling fish stocks and highly migratory fish stocks” (Article 5(a)).

Finally, the FAO International Plan of Action for the Management of Fishing Capacity (FAO Plan of Action on Capacity) calls for a series of actions to reduce excess fishing capacity. First, it calls for States to carry out preliminary assessments of the fishing capacity deployed at the national level by the end of 2000 and to update it periodically. This provision of the plan applies to foreign fleets as well as to national fleets deployed within EEZs. The FAO Plan of Action on Capacity further calls for States to identify fisheries and fleets requiring urgent measures with regard to capacity management and to take immediate steps to address the management of fishing capacity for international fisheries requiring urgent action, reducing substantially the capacity applied to over-

fished international resources. And, it calls for States to develop and adopt national plans of action to manage, and if necessary reduce, fishing capacity by the end of 2002. In developing capacity management plans, the FAO Plan of Action calls for States to assess the possible impact of subsidies on overcapacity.

### ***Relevant International Legal Norms***

- 1995 FAO Code of Conduct, *supra*, at Article 7.1.8:

*States should take measures to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with the sustainable use of fishery resources as a means of ensuring the effectiveness of conservation and management measures.*

- 1995 FAO Code of Conduct, *supra*, at Article 7.6.1:

*States should ensure that the level of fishing permitted is commensurate with the State of fisheries resources.*

- 1995 FAO Code of Conduct, *supra*, at Article 7.6.3:

*Where excess fishing capacity exists, mechanisms should be established to reduce capacity to levels commensurate with the sustainable use of fisheries resources so as to ensure that fishers operate under economic conditions that promote responsible fisheries, Such mechanisms should include monitoring the capacity of fishing fleets.*

- 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, A/CONF. 164/37, at Article 5 (Sept. 8, 1995) [hereinafter the 1995 Straddling Stocks Agreement]:

*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; ...*

*(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.*

■ 1992 Convention on Biological Diversity, *supra*, at Article 8:

*Each Contracting Party shall, as far as possible and as appropriate: ...*

*(c) regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use.*

■ 1992 Convention on Biological Diversity, *supra*, at Article 10:

*Each Contracting Party shall, as far as possible and as appropriate: ...*

*(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity.*

- 1992 Rio Declaration on Environment and Development, *supra*, at Principle 15:

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*

- World Charter for Nature, U.N.G.A. Resolution No. 37/7, at Principle 4 (Oct. 28, 1982) [hereinafter 1982 World Charter for Nature]:

*Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.*

- 1982 World Charter for Nature, *supra* at Principle 10:

*Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules: (a) Living resources shall not be utilized in excess of their natural capacity for regeneration... .*

- 1972 Stockholm Declaration on Human Environment, *supra*, at Principle 2:

*The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.*

- 1972 Stockholm Declaration on Human Environment, *supra*, at Principle 3:

*The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.*

■ U.N. Food & Agriculture Organization, International Plan of Action for the Management of Fishing Capacity (1999) [hereinafter the 1999 FAO Plan of Action on Capacity]:

*13. States should proceed, by the end of 2000, with a preliminary assessment of the fishing capacity deployed at the national level in relation to all the fleets of principal fisheries and update this assessment periodically.*

*14. States should proceed, by the end of 2001, with the systematic identification of national fisheries and fleets requiring urgent measures and update this analysis periodically.*

*21. States should develop, adopt and make public, by the end of 2002, national plans for the management of fishing capacity and, if required, reduce fishing capacity in order to balance fishing capacity with available resources on a sustainable basis. These should be based on an assessment of fish stocks and giving particular attention to cases requiring urgent measures and taking immediate steps to address the management of fishing capacity for stocks recognized as significantly overfished.*

*25. When developing their national plans for the management of fishing capacity, States should assess the possible impact of all factors, including subsidies, contributing to overcapacity on the sustainable management of their fisheries, distinguishing between factors, including subsidies, which contribute to overcapacity and unsustainability and those which produce a positive effect or are neutral.*

*39. States should take immediate steps to address the management of fishing capacity for international fisheries requiring urgent attention, with priority being given to those harvesting transboundary, straddling, highly migratory and high seas stocks which are significantly overfished.*

*40. Within the framework of their respective competencies, States should act individually, bilaterally and multilaterally, as appropriate, to reduce substantially the fleet capacity applied to these resources as part of management strategies to restore overfished stocks to sustainable levels considering, in addition to the other relevant provisions of the International Plan of Action: ...*

## **Vessel Reporting Requirements**

Reporting requirements for fishing vessels are an essential tool for achieving adequate monitoring, control and surveillance as well as for adequate enforcement and collection of data on fishing by foreign fleets within coastal States' fishing zones. Reporting requirements take a variety of forms, including vessel markings, reporting through log-books, reporting on or prior to entry into the fishing zone, reporting on position or crossing statistical boundaries, and reporting on catch and effort. Such requirements for reporting are fully consistent with international legal norms in the 1982 Convention and the UNFSA, and they have become a well-established feature of access agreements as well as coastal State and flag State legislation.

All coastal States should require a proper form of catch or effort reports. Log books are intended to record catch and information in a prescribed format on board the vessel. The information is to be entered into the log book at the time the activity occurs and is to be available for presentation upon request, usually during an on-board inspection or when calling in port. The requirement to keep an up-to-date log book on board is to aid inspection efforts as well as to prevent vessel masters or fleet managers filling out logs upon return to the home port and manipulating vital information. Further, most States require subsequent submission of the logs upon completion of the vessel's fishing trip, since it is a particularly useful mode of verification, especially when coupled with an observers program. Written logs also have legal significance, since they can help establish what was caught and can also be used as evidence in court if the log reveals illegal activity. Information from logs can also be compiled to develop a picture of past fishing patterns.

If the coastal State has no effective means of monitoring the fishing operation, the vessel master may have a disincentive to record accurate information. This is particularly the case where catch data is used by coastal States to determine fishing fee levels, since the greater the catch reported by the foreign vessel master, the greater the fee the vessel owner will have to pay. A comprehensive observer program can address this disincentive to fill out log books accurately. On-board observers can verify the record against their own observations and can also certify the accuracy of the log.

Coastal States are increasingly requiring the submission of fishing plans on the part of vessels requesting access to their fishing zones, either through legislation or as an administrative requirement. Fishing plans can be a useful tool to assist in monitoring a particular vessel's activities, because it allows the coastal State to anticipate such activities and deploy its surveillance capabilities accordingly. The plan may serve other management purposes as well, such as preventing damage to critical habitat areas.

The requirement that a fishing vessel formulate and adhere to a fishing plan can also be a significant burden, however. Because many fisheries resources are mobile, and some highly migratory, it is usually difficult for vessel masters to predict in advance the future direction of fishing activity. The coastal State can reduce this burden by allowing variations in the fishing plan, provided that prior notice is given to the authorities. Coastal States should ensure that fishing plan requirements are based on objective conditions of the fisheries in question. All of our model access agreements include provisions to give effect to FAO standard specifications for vessel marking. These requirements are a fundamental aspect of MCS.

### ***Relevant International Legal Norms***

- UN Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122, at Article 62 (4) (1982) [hereinafter the 1982 Law of the Sea Convention]:

*Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:...*

*(e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports.*

- 1995 Straddling Stocks Agreement, *supra*, at Article 5:

*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: ...*

*(j) collect and share, in a timely fashion, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, ... as well as information from national and international research programs.*

■ 1995 FAO Code of Conduct, *supra*, at Article 7.4.4:

*States should ensure that timely, complete and reliable statistics on catch and fishing effort are collected and maintained in accordance with applicable international standards and practices and in sufficient detail to allow sound statistical analysis. Such data should be updated regularly and verified through an appropriate system. States should compile and disseminate such data in a manner consistent with any applicable confidentiality requirements.*

■ 1992 Convention on Biological Diversity, *supra*, at Article 7:

*Each Contracting Party shall, as far as possible and as appropriate...*

*(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and*

*(d) Maintain and organize, by an mechanism, data derived from [such] identification and monitoring activities...*

## Cooperation in Scientific Research

Scientific information is central to fisheries conservation and sound fisheries management. As mentioned earlier, coastal States must have adequate scientific data on the status of targeted stocks to ensure that the fishing access granted, continued or renewed under a bilateral access agreement is consistent with the sustainability of the fishery resources in question. The 1982 Convention clearly recognizes the authority of coastal States to require that scientific research programs be conducted under its authority and that data from such research be reported to the coastal State.

Provisions in bilateral fishing access agreements for cooperation between the parties in carrying out scientific research on the status of the resources represent an important mechanism for ensuring an adequate knowledge base for

management of the bilateral agreement. Where the coastal State cannot conduct the necessary research this work can be out-sourced to independent foreign experts. Alternatively, the research can be conducted by the DWFN and can be reviewed by the coastal State.

### ***Relevant International Legal Norms***

■ 1982 Law of the Sea Convention, *supra*, at Article 62(4):

*Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following: ...*

*(f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data.*

■ 1995 FAO Code of Conduct, *supra*, at Article 12:

*12.1 States should recognize that responsible fisheries require the availability of a sound scientific basis to assist fisheries managers and other interested parties in making decisions. Therefore, States should ensure that appropriate research is conducted into all aspects of fisheries including biology, ecology, technology, environmental science, economics, social science, aquaculture and nutritional science. States should ensure the availability of research facilities and provide appropriate training, staffing and institution building to conduct the research, taking into account the special needs of developing countries.*

*12.3 States should ensure that data generated by research are analyzed, that the results of such analyses are published, respecting confidentiality where appropriate, and distributed in a timely and readily understood fashion, in order that the best scientific evidence is made available as a contribution to fisheries conservation, management and development. In the absence of adequate scientific information, appropriate research should be initiated as soon as possible.*

*12.5 States should be able to monitor and assess the State of the stocks under their jurisdiction, including the impacts of ecosystem changes resulting from fishing pressure, pollution and habitat alteration. They should also establish the research capacity necessary to assess the effects of climate or environmental change on fish stocks and aquatic ecosystems.*

■ 1995 Straddling Stocks Agreement, *supra*, at Article 25:

*1. States shall cooperate, either directly or through sub-regional, regional or global organizations, to:*

*(a) 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 stock.*

*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.*

■ 1992 Convention on Biological Diversity, *supra*, at Article 12:

*The Contracting Parties, taking into account the special needs of developing countries, shall...*

*(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries ...*

■ 1992 Rio Declaration on Environment and Development, *supra*, at Principle 9:

*States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.*

■ 1982 World Charter for Nature, *supra*, at Principle 18:

*Constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind.*

■ 1972 Stockholm Declaration on the Human Environment, *supra*, at Principle 20:

*Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted...*

### **Discards, Waste and Non-Target Species**

The unintentional catch and discarding of juveniles, non-target species and species associated with or dependent upon the target stocks by fishing fleets, often called "bycatch", has been estimated by FAO to be one-third as large as the officially reported marine fish catch. This level of unintended catch of immature fish and non-target species represents a serious threat to the sustainability of marine fisheries. Recent international legal instruments on fisheries management have called for States to minimize the bycatch problem. The Code of Conduct calls for appropriate measures to minimize waste, discards and catch of non-target species as a general principle and lists measures that might be applied, including those related to fish size, mesh size or gear, closed seasons and areas and zones reserved for artisanal fishers. It also focuses specifically on fishing gear selectivity as a means of addressing the problem.

Specialists on the bycatch problem have identified minimum mesh size regulations, vessel bycatch limits for an entire fishing season and vessel minimum performance standards regarding bycatch/catch ratio as potentially effective management instruments for reduction of bycatch. While many bilateral fishing access agreements contain provisions to reduce bycatch, such as minimum gear mesh sizes, considerable progress remains to be made.

Maximum allowances of retention of by-catch of commercially valuable non-target species have commonly been included in certain access agreements, but with wide differences in the maximum percentage of bycatch for each

category of marine resource allowed. Obviously, high levels of allowable retention may seriously impact non-target species.

States should strive to implement “best practices” standards for each minimum mesh size and maximum by-catch per category of fishery resource and, if possible, reach agreement on a regional basis on a common minimum standard. That standard should be at or close to the highest existing standard in the region.

Restrictions on retention of by-catch sometimes promote the practice of discarding the by-catch that exceeds the allowable amount, prolonging the problem of by-catch rather than solving it. A good practice, and one we suggest in the models, is to prohibit discarding and to require the vessel either to stop fishing or move to another location, once the limit on by-catch is reached. Alternatively, the vessel could switch mesh sizes or fishing methods if it is clear that these changes would effectively solve the problem.

### ***Relevant International Legal Norms***

■ 1995 FAO Code of Conduct, *supra*, at Article 6.6:

*Selective and environmentally safe fishing gear and practices should be further developed and applied to the extent practicable, in order to maintain biodiversity and to conserve the population structure and aquatic ecosystems and protect fish quality. Where proper selective and environmentally safe fishing gear and practices exist, they should be recognized and accorded a priority in establishing conservation and management measures for fisheries. States and users of aquatic ecosystems should minimize waste, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species.*

■ 1995 FAO Code of Conduct, *supra*, at Article 7.6.9:

*States should take appropriate measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and negative impacts on associated or dependent species, in particular endangered species. Where appropriate, such measures may include technical measures related to fish size or gear, discards, closed seasons and areas and zones reserved for selected fisheries, particularly artisanal fisheries. Such measures should be applied, where appropriate, to*

*protect juveniles and spawners. States and sub-regional or regional fisheries management organizations and arrangements should promote, to the extent practicable, the development and use of selective, environmental safe and cost effective gear and techniques.*

■ 1995 FAO Code of Conduct, *supra*, at Article 8.5.1:

*States should require that fishing gear, methods and practices, to the extent practicable, are sufficiently selective so as to minimize waste, discards, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species. In this regard, fishers should cooperate in the development of selective fishing gear and methods. States should ensure that information on new developments and requirements is made available to all fishers.*

■ 1982 World Charter for Nature, *supra*, at Principle 10:

*Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules:*

*(a) Living resources shall not be utilized in excess of their natural capacity for regeneration...*

■ 1982 World Charter for Nature, *supra*, at Principle 11:

*Activities which might have an impact on nature shall be controlled and the best available technologies that minimize significant risks to nature or other adverse effects shall be used, in particular:*

*(a) Activities which are likely to cause irreversible damage to nature shall be avoided.*

## Flag State Responsibilities

In investigating, prosecuting and bringing sanctions to bear against vessels that violate the terms and conditions of access agreements coastal States usually have no alternative but to rely on the cooperation of the authorities of the DWFN. But bilateral access agreements have generally had only very weak provisions requiring flag States to take responsibility for the actions of its flag vessels. Now,

recent developments in international fisheries law provide strong norms for flag State responsibility, and these norms are reflected in our model agreements.

The concept of State responsibility for vessels flying its flag originally referred only to the flag State's responsibility for ensuring observance of international law relating to navigation. It is now used in the areas of fishing, pollution control, maritime safety and conditions of employment at sea. Quite new is the international legal norm that the States that grant the right to fly their flag to a fishing vessel should also have the responsibility to regulate fishing undertaken by the vessels. It appeared in an international legal document for the first time when it was endorsed in the Food and Agricultural Organization's World Conference on Fisheries and Development held in Rome in 1984. That conference adopted the principle that, "Where access is granted to foreign fishing vessels, the flag States themselves should take measures to ensure compliance with the terms of access agreements and with coastal State fisheries laws and regulations." It went on to recommend that coastal States "should consider including provisions to this effect in bilateral access agreements."

The Agreement to Promote Compliance with International Conservation and management Measures by Fishing Vessels on the High Seas, (the Compliance Agreement) negotiated under FAO sponsorship, provides the most concrete norms for flag State responsibility. Most of the provisions of that agreement apply only to fishing on the high seas, but the agreement also requires that a State take whatever measures are necessary to "ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures."

The UNFSA requires a number of actions by the flag States to ensure flag vessel compliance, including:

- taking enforcement measures wherever violations occur;
- investigating alleged violations immediately and in full;
- reporting back to the State alleging the violation as well as to the relevant sub-regional organization or arrangement on the measures taken;
- requiring any vessel flying its flag to provide all relevant information to the investigation authority;
- prosecuting the case itself if the investigation so warrants and ensuring that any vessel that has engaged in serious violations of conservation and management measures does not engage in high seas fishing until it has complied with sanctions imposed for the violations.

The UNFSA also calls for sanctions that are severe enough to deter future serious violations and may include refusal, withdrawal or suspension of authorization to serve as master of officer on a fishing vessel.

The Code of Conduct, in Article 8.2.7, calls for flag States to take enforcement measures in respect to vessels entitled to fly their flag which are found to have violated applicable conservation and management measures, regardless of whether the measures are those of sub-regional organizations or arrangements and applicable to high seas fishing or are promulgated by a Coastal State and are applicable within its EEZ. It even urges flag States, where appropriate, to make contravention of such measures an offense under its own laws, and suggests that sanctions could include provision for refusal, withdrawal or suspension of the authorization to fish.

Although these legal norms are clear enough, confusion in some circumstances could arise in applying the principle of flag State responsibility in the context of bilateral fishing agreements, because the State seeking access to a coastal State's fishing grounds is not necessarily the flag State for all the vessels granted access under the agreement. There is no rule requiring that all vessels which actually come to fish in an EEZ under a bilateral or multilateral access agreement must have the nationality of the State that negotiated the access agreement. And sometimes situations arise in which some of the vessels fishing under an agreement do not fly the flag of the DWFN that negotiated the access agreement.

One reason that this situation has become more common is the emergence of a market for long-term and short-term chartering of fishing vessels. In many situations, companies that are entitled to EEZ access under a fishing agreement as nationals of the access-seeking State may nevertheless charter vessels and crew that fly the flag of a State that is not a party to the agreement. This may be because of employment costs, the specialized experience of the crew of a given charter vessel, or the possibility of marketing advantages from chartering a vessel from a particular country or company. Under these circumstances, the DWFN that negotiated access cannot be held responsible under international law for the activities of the chartered vessel. Thus coastal State authorities negotiating and/or implementing an agreement need to be aware of the distinction between the categories of the access-seeking State and the flag State of a particular vessel that gains access under the agreement.

We strongly advise coastal States to prohibit a DWFN from allowing vessels not flying the flag of the DWFN from fishing under the access agreement, whether the vessel is reflagged or chartered (See, e.g., Article 3 of Model Agreement Number One).

### **Relevant International Legal Norms**

- UN Food & Agriculture Organization, Agreement to Promote Compliance with International conservation and Management Measures by Fishing Vessels on the High Seas, at Article 3:1(a) (1993) [hereinafter the 1993 FAO Compliance Agreement]:

*Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.*

- 1995 Straddling Stocks Agreement, *supra*, at Article 19:

*1. A State shall ensure compliance by vessels flying its flag with sub-regional 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 alleged violations of sub-regional 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 sub-regional or regional organization or arrangement on the process 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, that 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.*

■ 1995 FAO Code of Conduct, *supra*, at Article 8.2.7:

*Flag States should take enforcement measures in respect of fishing vessels entitled to fly their flag which have been found by them to have contravened applicable conservation measures and management measures, including, where appropriate, making the contravention of such measures an offence under national legislation. Sanctions applicable in respect of violations should be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and should deprive offenders of the benefits accruing from their illegal activities. Such sanctions may, for serious violations, include provisions for the refusal, withdrawal or suspension of the authorization to fish.*

## Compliance and Enforcement

### Monitoring, Control and Surveillance

Effective monitoring, control and surveillance (MCS) systems are critical elements of a system for regulating fishing by distant water fleets and supporting the conservation measures written into fishing access agreements. International norms for fisheries management emphasize the necessity for effective systems for monitoring and surveillance, and the Code of Conduct calls for the use, where appropriate, of observer programs, inspection schemes and vessel

monitoring systems. An FAO-sponsored expert consultation in January 1995 on guidelines for responsible fishing called for making the establishment of systems of monitoring and surveillance a condition for licensing, especially for distant water fleets.

Observer programs are well-established components of bilateral fishing access agreements. The use of electronic vessel monitoring systems (VMS) has increased rapidly in recent years, and has been adopted by the entire membership of the Forum Fisheries Agency. While most EU-African fishing access agreements have not included provision for such programs, both the recent agreements between Morocco and the EU and Morocco and Senegal include specific provisions relating to the establishment of a satellite tracking system.

VMS systems by themselves are not sufficient to ensure the collection of necessary data on fishing or to detect violations of fisheries regulations. Inspection of catch in port is one method by which coastal States have tried to monitor fish catch, but this method alone is often not effective, especially if the DWFN is transshipping the catch at sea, as has been the case with DWFNs fishing within African coastal State EEZs. Therefore, some physical surveillance by ships and/or planes may be necessary to make any catch limits fully effective.

Coastal State MCS capabilities remain far from adequate. Strengthening those capabilities, therefore, should be an integral element in every bilateral fishing access agreement. In the model agreements, we suggest a provision under which the coastal State and DWFN may seek to establish a formal mechanism for agreeing on a plan for increasing the MCS capabilities of the coastal State to an agreed minimum level, by establishing a working group for that purpose. A precedent for such a working group is provided by the 1995 EU-Moroccan agreement, under which a joint working group was established to define the procedures for establishing, implementing and financing a satellite tracking project. A critical component of any strategy for building up adequate MCS capabilities is to ensure that a portion of the compensation payments and fishing license fees are used for that purpose.

If the coastal State lacks sufficient MCS capabilities, an option would be to contract out the MCS functions to a private entity for an interim period, pending the establishment of a national or sub-regional capability. A private company carried out aerial surveillance on the territorial waters of four Northwest African coastal States over seven months in 1993 at a relatively modest cost.

## Enforcement

A key to sustainable management of coastal State fisheries is a robust enforcement regime. International fisheries law gives the coastal State wide latitude in determining what measures to take in enforcing the laws and regulations governing fishing activities within its EEZ. The only prohibition in the 1982 Convention regarding enforcement and penalties for violation of its regulations regarding management of living resources is that the coastal State may not use corporal punishment against the crew of a vessel, and may not use imprisonment unless it has formal agreements with the flag State allowing it.

Penalties may be imposed directly or indirectly on a vessel or fleet. The most frequently used direct sanctions are civil penalties and criminal prosecutions leading to fines and forfeitures. Civil penalties may include revocation of licenses or even denial of port calls to particular vessel. Indirect sanctions available include reduction of or cancellation of fishing rights to an entire fleet, on the basis of offences committed by a few vessels, or denial of port access to vessels from a particular country.

The most common administrative penalty is the withdrawal of a license to fish. Where the fishery is lucrative or significant investments have been made by vessel owners, the suspension or revocation of a fishing license can be a more effective sanction than monetary fines, involving a greater economic impact than the maximum monetary penalty that can be assessed under the statute.

Fines and forfeitures are among the most important weapons in the arsenal of the fisheries law administrator. Mandatory forfeitures and fines are provided for in the legislation of many States, either for a first or second offense. But the economic advantage to a foreign fishing vessel from violating the law is frequently greater than the maximum fine permitted by the statute. And the length of time required for court proceedings further diminishes the value of the fine as a deterrent, especially if the vessel is allowed to continue fishing in the interim.

Coastal States can increase the effectiveness of enforcement by requiring distant water fleet vessels to establish a bond to ensure satisfactory performance. This is an established practice in some West African jurisdictions.

## Relevant International Legal Norms

■ 1982 Law of the Sea Convention, *supra*, at Article 73:

1. *The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures including boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.*

2. *Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.*

3. *Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.*

4. *In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.*

■ 1995 FAO Code of Conduct, *supra*, at Article 7.1.7:

*States should establish, within their respective competencies and capacities, effective mechanisms for fisheries monitoring, surveillance, control and enforcement to ensure compliance with their conservation and management measures, as well as those adapted by subregional organizations or arrangements.*

■ 1995 FAO Code of Conduct, *supra*, at Article 7.7.3:

*States, in conformity with their national laws, should implement effective fisheries monitoring, control, surveillance and law enforcement measures including, where appropriate, observer programmes, inspection schemes and vessel monitoring systems. Such measures should be promoted and, where appropriate, implemented by subregional or regional fisheries management organizations and arrangements in accordance with procedures agreed by such organizations or arrangements.*

■ 1995 Straddling Stocks Agreement, *supra*, at Article 25:

*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 development States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks...*

*3. Such assistance shall, inter alia, be directed specifically towards: ...*

*(c) monitoring, control and 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.*

■ 1992 Convention on Biological Diversity, *supra*, at Article 7:

*Each Contracting Party shall, as far as possible and as appropriate...*

*(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and*

*(d) Maintain and organize, by an mechanism, data derived from [such] identification and monitoring activities...*

■ 1982 World Charter for Nature, *supra*, at Principle 19.

*The status of natural processes, ecosystems, and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and measures.*

## Dispute Settlement

Most access agreements at the government to government level contain provisions relating to dispute resolution. The usual provision simply requires the two governments, in the event of a dispute, to endeavor to settle the dispute by mediation, conciliation or peaceful negotiations between themselves. Such provisions are broadly consistent with article 279 of the 1982 Convention which stipulates that States Parties are obliged to settle their disputes by peaceful means. In accordance with article 33 of the UN Charter, such peaceful means gener-

ally include negotiation, enquiry, mediation, conciliation, arbitration or judicial settlement. Each procedure listed involves an increasing level of involvement by the parties to the dispute and it will be for the parties to determine, depending on the circumstances, which method is most appropriate.

The 1982 Convention makes provision for compulsory and binding settlement of disputes. However, it should be noted that under articles 297(1) and 297(3), of the Convention, disputes concerning the exercise by a coastal State of its sovereign rights over EEZ fisheries, including disputes arising from failures to determine TACs and coastal harvesting facilities, the allocation of surpluses to other States and the terms of conservation measures, are specifically excluded from the compulsory procedures entailing binding decisions prescribed in Part XV of the Convention.

Under article 297(3)(b), of the 1982 Convention, however, a dispute involving a coastal State may be submitted to a conciliation commission under Annex V of the Convention where it is alleged that the coastal State has manifestly failed to comply with its obligations of conservation and management, or has arbitrarily refused, at the request of another State, to determine a TAC and its capacity to harvest the resources in its EEZ, or has arbitrarily refused to allocate any surplus to another State.

In general, coastal States will not wish to relinquish the protection afforded them by the exemptions contained in article 297(1) and (3) of the Convention. On the other hand, in the event of a dispute, it is important to achieve finality and, in some circumstances, parties to bilateral access agreements may therefore wish to consider the possibility of including procedures for non-binding mediation. If mediation fails, the access agreement could provide compulsory and binding dispute settlement in the event that it is not possible to resolve a dispute by mediation. In particular, the situation must be avoided whereby one party can prolong a dispute by refusing to agree to submit the dispute to binding arbitration after other means of settling the dispute have failed. For this purpose, parties to a bilateral access agreement may wish to consider using one of the arbitration procedure set out in Annex VII and Annex VIII of the 1982 Convention. Ultimately, however, the most effective sanction for the coastal State may be simply to refuse to renew the access agreement unless and until the matter in dispute is resolved to its satisfaction. In our model texts, two alternative approaches have been provided. (See, e.g., Article 19 of Model Agreement Number One.)

Without satisfactory resolution of the dispute, the coastal State may simply refuse to renew the access agreement.

In the case of access agreements entered into at the industry level, the usual procedure is to call for consultations between the parties within a limited time period and, failing any agreement on the dispute in question, to refer the matter to arbitration in accordance with the laws of the coastal State, or, where no such laws exist, in accordance with internationally recognized procedures for commercial arbitration such as the UNCITRAL Rules or the Rules of the Permanent Court of Arbitration.

◆ *1982 Law of the Sea Convention, supra, at Article 279:*

*States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.*

◆ *1995 Straddling Stocks Agreement, supra, at Article 27:*

*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.*

◆ *1995 Straddling Stocks Agreement, supra, at Article 28:*

*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.*

◆ *1995 Straddling Stocks Agreement, supra, at Article 29:*

*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 endeavor to resolve the dispute expeditiously, without recourse to binding procedures for the settlement of disputes.*

◆ *1992 Rio Declaration on Environment and Development, supra, at Principle 26:*

*States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.*

## Transparency

It is essential that national and international decision-making on access agreements be conducted in the public domain and that the texts of bilateral access agreements be freely and fully available to the public. This is an important means by which legitimacy can be ensured for ecologically responsible fishing, particularly in regard to measures to reduce fishing capacity in specific fleets and fisheries to levels commensurate with sustainable catch levels. Without such transparency, participation in global, regional and local decision-making will also be difficult for stakeholders that have been excluded in the past (local fishers, environmental and development NGOs, indigenous rights groups, community-based organizations, etc.).

Recent international agreements have reflected international recognition of the need for transparency and enhanced participation by non-governmental actors. The UNFSA calls for transparency in decision-making in regional and sub-regional organizations and arrangements, whereas the Code of Conduct urges transparency by all States as well as by such regional and sub-regional bodies in the mechanisms for fisheries management and in the related decision-making process. Since bilateral fishing access agreements are clearly "mechanisms for fisheries management", the principle of transparency should apply to information about access agreements.

The principle of transparency should also apply to aggregate data related to the *implementation* of such agreements, including the fishing capacity and catch of foreign fleets given access to coastal State waters, since it is impossible for the public and interested stakeholders to evaluate the consequences of the agreement without access to such data. Commercially relevant data generated by bilateral access agreement, however, must be excepted from the transparency principle. Data on the capacity or catch of individual vessels or on where fish are caught would compromise commercial secrets, and fishing enterprises and some distant water fishing States have continued to voice concerns about maintaining strict confidentiality. The parties can deal with commercial confidentiality concerns by releasing only aggregate data, by security audits and by legislation imposing strict penalties on unauthorized disclosure of commercial data.

### ***Relevant International Legal Norms***

- 1995 Straddling Stocks Agreement, *supra*, at Article 12.1:

*States shall provide for transparency in the decision-making process and other activities of sub-regional and regional fisheries management organizations and arrangements.*

- 1995 FAO Code of Conduct, *supra*, at Article 6.13:

*States should, to the extent permitted by national laws and regulations, ensure that decision-making processes are transparent and achieve timely solutions to urgent matters...*

- 1995 FAO Code of Conduct, *supra*, at Article 7.1.9:

*States and sub-regional and regional fisheries management organizations and arrangements should ensure transparency in the mechanisms for fisheries management and in the related decision-making process.*

- 1992 Rio Declaration on Environment and Development, *supra*, at Principle 10:

*At the national level, each individual shall have appropriate access to information concerning the environment that held by public authorities... and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.*

- 1982 World Charter for Nature, *supra*, at Principle 23:

*All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.*

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## MODEL FISHERIES ACCESS AGREEMENTS

**B**ilateral fisheries access agreements may take several different forms. Each agreement reflects, of course, the particular characteristics of the fishery or fisheries in question as well as the national and international context of the agreement.

States may condition the grant of right of access to their fisheries on the performance of specific requirements on the part of the distant water fishing State. Examples include such conditions as whether, and to what extent, the DWFN is cooperating with the coastal State in the enforcement of fishing regulations, whether the DWFN minimizes gear conflicts with fishing operations of coastal State fishermen, and whether the DWFN makes substantial contributions to fishery research.

It should be noted that some agreements, such as those negotiated by Pacific island States, cover highly migratory stocks exclusively; whereas others, such as those negotiated by West African States, cover a range of different types of fishery resources.

Some access agreements are made at the government to government level, whereas others involve agreements between coastal State government and fishing industry associations or even specific companies. Taiwanese,

South Korean and Japanese fishing industry associations have entered into many such agreements with coastal States around the world. In these agreements, responsibility for compliance with the terms of the agreement by individual companies and vessels is assumed by the industry association or the company.

Agreements governing access to Pacific island State's fisheries have provided only for fees paid by vessel owners, but those governing access to West African fisheries have provided for State-to-State compensation for fishing opportunities as well as for license fees.

The form of agreements also differs substantially. For example, bilateral access agreements between the West African coastal States and the European Union normally contain only very general provisions, whereas more detailed provisions on fishing opportunities, compensation and other issues are contained in a protocol.

To ensure that the model agreement presented here is relevant to these different approaches the authors have presented three alternative models for consideration. These are:

- Government to government agreement;
- Government to government agreement with a subsidiary agreement with a fishing industry association; and
- Government to industry agreement.

The texts of these model agreements, with the accompanying explanatory footnotes, are intended to demonstrate how important principles of sustainable fisheries management can be integrated into the text of a bilateral access agreement. The texts are presented not as an exclusive approach, but rather as a “toolkit” of provisions which reflect the discussion of Key Principles in Section 1 and Essential Elements in Section 2.

# MODEL AGREEMENT NUMBER ONE

## Government to Government Access Agreement

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## **MODEL AGREEMENT ON FISHERIES BETWEEN THE GOVERNMENT OF <FISHING NATION> AND THE GOVERNMENT OF <COASTAL STATE>**

**The Government of < > and the Government of < >,**

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

*Recognizing* that <coastal State> has established a 200 nautical mile exclusive economic zone [exclusive fishing zone] within which <coastal State> exercises, in accordance with international law, sovereign rights for the purposes of exploring and exploiting, conserving and managing the living resources therein (hereinafter referred to as “the <coastal State> EEZ”),

*Considering* their common concern for the sustainable management, conservation and utilization of the fishery resources of the <coastal State> EEZ,

*Desiring* to establish reasonable terms and conditions under which fishing vessels and nationals of <fishing nation> may be granted access to the surplus catch in the <coastal State> EEZ,

*Committed* to responsible fisheries,

*Affirming* their wish to establish mutually beneficial cooperation in the field of fisheries, thereby enhancing friendly relations between <coastal State> and <fishing nation>,

Have agreed as follows:

## **ARTICLE 1: PURPOSE**

The purpose of this Agreement is to promote effective conservation and sustainable use of the fisheries resources of mutual interest in the <coastal State> EEZ, to facilitate the rapid and full development of the <coastal State> fishing industry, and to establish a common understanding of the principles and procedures under which fishing may be allowed to continue by nationals and fishing vessels of <fishing nation> for the marine living resources over which <coastal State> exercises sovereign rights.

## **ARTICLE 2: JURISDICTION AND DEFINITIONS**

For the purposes of this Agreement:

2.1 “fishing” means:

- (a) searching for, catching, taking or harvesting fish;
- (b) attempting to search for, catch, take or harvest fish;
- (c) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting fish for any purpose;
- (d) placing, searching for, recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (a) through (d), including transshipment; and
- (f) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraph (a) to (e) except for emergencies involving the health and safety of crew or the safety of a vessel.

2.2 “fishing vessel” means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations.

2.3 “fishing trip” means any period commencing with the departure of the vessel from port for the purpose of beginning a fishing trip to such time as any or all of the fish on board the vessel are unloaded from the vessel, either ashore or onto another vessel.

2.4 “operator” means any person who is in charge of, directs or controls a vessel either at sea or in port.

2.5 “transshipment” means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

## ARTICLE 3: ACCESS AUTHORIZATION

The Government of <coastal State> shall authorize access for fishing vessels of <fishing nation> to fish in <coastal State> fishing zone in accordance with the provisions of this Agreement and of the laws and regulations in force in <coastal State> relating to fisheries. Only vessels flying the flag of <fishing nation> shall be authorized to fish under this agreement.

## ARTICLE 4: COMPENSATION\*

- 4.1 In return for the fishing access granted pursuant to this Agreement the <fishing nation> shall make annual payments to <coastal State> for the duration of this Agreement. These payments will be made in accordance with paragraphs 2-4 below:
- 4.2 The financial compensation for the first year of the Agreement shall be <number> <currency>.
- 4.3 Unless <coastal State> decides to reduce or increase the level of fishing capacity authorized to fish pursuant to this Agreement and/or the total allowable catch by vessels authorized to fish pursuant to this Agreement, the financial compensation to be provide in year 2 through year [ ] of the Agreement shall be as follows:
- Year 2: <number> <currency>
  - Year 3: <number> <currency>
- [etc.].
- 4.4 In the event that the <coastal State> decides to reduce or increase the level of fishing capacity authorized to fish pursuant to this Agreement and/or the total allowable catch by vessels authorized to fish pursuant to this Agreement, it shall immediately inform the <fishing nation> of the decision, and the level of compensation to be provided in paragraph 1 above shall be reduced or increased proportionately.

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\* This provision for compensation is included in the model text of a stand-alone state-to-state agreement, because it is a central feature of bilateral agreements for access to African coastal States' resources. However, we strongly urge coastal States to begin a rapid transition to reliance on adequate license fees rather than official compensation in order to eliminate perverse subsidies. See Section 2 - Essential Elements in Access Agreements.

## ARTICLE 5: BILATERAL CONSULTATIONS

- 5.1 The Government of <fishing nation> and the Government of <coastal State> shall hold bilateral consultations from time to time concerning fishing by nationals and fishing vessels of <fishing nation> within the <coastal State> EEZ and regarding the implementation of this Agreement.
- 5.2 In such consultations, the two Governments shall, *inter alia*, examine the possibility of developing broader cooperation in the field of fisheries, including in particular:
- (a) The exchanges of technical information and personnel, including training;
  - (b) The facilitation of cooperative arrangements between <fishing nation> and <coastal State> enterprises for the harvesting of marine living resources from the <coastal State> EEZ and for the utilization, processing and marketing of catches from the <coastal State> EEZ;
  - (c) The use of canning, transshipment, shipping and repair facilities located in <coastal State>;
  - (d) The purchase of equipment and supplies located in <coastal State>;
  - (e) Greater involvement of <coastal State> nationals in fisheries, including through employment as crew members on board licensed <fishing nation> fishing vessels; and
  - (f) The improvement of existing fishing port facilities.

## ARTICLE 6: CATCH AND EFFORT RESTRICTIONS

- 6.1 For the first year of the period of this Agreement, the total fishing capacity of vessels of <fishing nation> granted access pursuant to this Agreement, the total allowable catch for vessels of <fishing nation> granted access pursuant to this Agreement and the allowable catch for each type of vessel of <fishing nation> granted access pursuant to this Agreement shall be set out in the Data-sheet appended to this Agreement.
- 6.2 For subsequent years the fishing access granted pursuant to this Agreement shall be determined as follows:
- (a) On an annual basis, the <coastal State> shall calculate the maximum sustainable level of catch for each fishery resource under its sovereign jurisdiction, taking into account the best available scientific information on the state of stocks and the application of the precautionary approach.

- (b) On an annual basis, the <coastal State> shall estimate the harvesting capacity of fishing vessels of the <coastal State> and any other vessels authorized to fish in its fishing zone in respect of each fishery resource, and shall determine the portion of the total allowable catch that shall be made available to the fishing vessels of <fishing nation>.
- (c) On an annual basis, <coastal State> shall determine the allowable catch for each type of vessel authorized to fish pursuant to this Agreement and the total number of vessels of each type authorized to fish pursuant to this Agreement.
- (d) The <coastal State> shall maintain a complete register of fishing vessels licensed to fish in its waters under this Agreement during the first year of the Agreement, which shall include information on engine size, hold capacity and other on-board technologies for each vessel, which shall be updated annually. The <coastal State> shall use this data to calculate, on an annual basis, the total fishing capacity of fishing vessels of <fishing Nation> that can be permitted access consistent with the total allowable catch to be made available to the fishing vessels of <fishing nation>.
- (e) In the event that the total capacity of <fishing nation> vessels already authorized to fish in <coastal State> waters pursuant to this Agreement shall be determined by <coastal State> to be in excess of a level of capacity that is commensurate with the maximum sustainable level of catch established pursuant to this paragraph, the <coastal State> shall make whatever reduction in the number of <fishing nation> vessels authorized to fish in <coastal State> waters may be necessary to reduce total fishing capacity in its waters to a level consistent with the aforementioned sustainable level of catch by issuing fewer fishing licenses to fishing vessels of <fishing nation>.
- (f) If the <coastal State> determines that the state of fish stocks has improved sufficiently, it may increase the level of fishing capacity of vessels of <fishing nation> authorized to fish in <coastal State> waters by increasing the number of fishing licenses to fishing vessels of <fishing nation>.

## **ARTICLE 7: CLOSED AREAS AND SEASONAL RESTRICTIONS**

- 7.1 In order to protect local and artisanal fishing operations, the fishing vessels of <fishing nation> licensed to fish in <coastal State> waters under this agreement shall not be authorized to fish within 12 nautical miles from the base lines.
- 7.2 The <coastal State> may from time to time, after consultation with the <fishing nation> close certain areas in the EEZ to certain types of fishing operations. Where such closed areas have been established pursuant to this paragraph, the operator shall, at least 24 hours prior to entry into or departure from a closed area, send a notice to the <coastal state>.
- 7.3 Notwithstanding anything herein contained, fishing is prohibited within a radius of one and a half (1 1/2) miles of any fish aggregating device deployed within the EEZ. The Director shall notify the <fishing nation> of any such devices and the <fishing nation> shall ensure that the operators of <fishing nation> vessels are kept fully informed of the location of such devices.
- 7.4 In order to ensure that stocks are able to fully recover, vessels authorized to fish pursuant to this Agreement shall be prohibited from fishing for <species or category> during the months of <months>. [Alternative: either party may declare a biological rest period in which no fishing will be allowed for <species or category> for up to < > months.]
- 7.5 The Contracting Parties may decide by common agreement to adjust the above period of biological recovery.

## **ARTICLE 8: COMPLIANCE WITH LAWS OF <COASTAL STATE>**

- 8.1 The Government of <coastal State> shall require compliance by fishing vessels of <fishing nation> engaged in fishing within the <coastal State> EEZ with all laws and regulations of <coastal State> applicable to foreign fishing vessels within the <coastal State> EEZ.
- 8.2 Where a permit has been issued under this Agreement, the permit, or a facsimile copy thereof, shall be maintained in good condition and permanently displayed on board the vessel in respect of which it is issued.

The permit shall be produced on demand to an authorized officer, provided that, in the case of long-line and pole and line vessels, where the vessel is at sea on the date of issue of the registration certificate, production of a permit number, or permit application number in the event the permit number is not yet available, and evidence of the remittance of fees shall be sufficient compliance with the obligation imposed by this provision. In the event that a registration certificate or permit has not yet been issued the master of the vessel shall indicate so to the Director on entering the EEZ or any part thereof.

- 8.3 The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified Fisheries Officer or Police Officer, including to stop, to move to specified location, and to facilitate safe boarding and inspection of the vessel, its permit, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.
- 8.4 Vessels authorized to fish pursuant to this Agreement shall comply with the 1989 FAO standard specifications for the marking and identification of fishing vessels. In particular the international radio call sign of the vessel, or, if the vessel does not have a radio call sign, its signal letter shall be painted in white on a black background, or in black on a white background on the port and starboard sides of the vessel's hull or superstructure in block letters not less than one (1) meter in height in such a manner that the markings are clearly visible from the air and at sea level. <The <Japanese> <Chinese> <Russian> name of the vessel will be printed clearly in the English language on the bow and the stern of the vessel>.
- 8.5 At all times while the vessel is in the <coastal state> waters all parts of these markings shall be clear, distinct and uncovered.
- 8.6 At the request of the Government of the <coastal State>, approved and duly certified position-fixing and identification equipment shall be installed, maintained in working order and operated on the vessels.

## **ARTICLE 9: FLAG STATE RESPONSIBILITY**

9.1 The Government of <coastal State> shall notify promptly the Government of <fishing nation> of new laws relating to fisheries in force in waters under its jurisdiction.

Upon receipt of such notification, the Government of <fishing nation> shall take all necessary steps to ensure:

- (a) that its nationals and fishing vessels shall not engage in fishing within the <coastal State> EEZ, unless duly issued with permits pursuant to this Agreement;
  - (b) that each fishing vessel of <fishing nation> issued with a permit to fish within the <coastal State> EEZ complies with the provisions of this Agreement and any subsidiary agreement issued pursuant to this Agreement; and
  - (c) that persons on board fishing vessels of <fishing nation> within the <coastal State> EEZ allow boarding and comply with the instructions of duly authorized <coastal State> officials for the purposes of inspection and enforcement.
- 9.2 The Government of <fishing nation> shall, at the request of the Government of <coastal State>, fully investigate any alleged infringement of this Agreement involving a fishing vessel of <fishing nation>, and report as soon as practicable and in any case within two months to the Government of <coastal State> on that investigation and on any action taken or proposed to be taken by the Government of <fishing nation> in relation to the alleged infringement.
- 9.3 In the event that a report provided pursuant to paragraph 2 of this article shows that there exists probable cause to believe that a fishing vessel of <fishing nation> has been involved in an infringement of this Agreement, including a violation of the laws and regulations of <coastal State>, and that the vessel has not submitted to the jurisdiction of <coastal State>, the Government of <fishing nation> shall, at the request of the Government of <coastal State>, take all necessary measures to ensure that the vessel concerned submits to the jurisdiction of <coastal State> or is penalized by the Government of <fishing nation> at such level as may be provided for like violations in <fishing nation> law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of <fishing nation> and that the vessel does not engage in fishing operations on the high seas until such time that it is in full compliance with all outstanding sanctions

imposed by the Government of <fishing nation> in respect of the violation.

9.4 The Government of <fishing nation> and the Government of <coastal State> shall, to the extent permitted by their national laws and regulations, establish arrangements for making available to the prosecuting authorities of each Government, evidence relating to alleged violations of this Agreement.

9.5 The Government of <fishing nation> shall ensure that:

- (a) each fishing vessel of <fishing nation> issued with a permit pursuant to this Agreement is fully insured against all risks and liabilities, including, but not limited to, collision, protection and indemnity and oil pollution liability insurance;
- (b) all measures are taken to facilitate:
  - (i) any claim arising out of the activities of a fishing vessel of <fishing nation>, including a claim for the total market value of any fish taken from the <coastal State> EEZ without authorization pursuant to this Agreement, and the prompt settlement of that claim;
  - (ii) the service of legal process by or on behalf of a national or the Government of <coastal State> in any action arising out of the activities of a fishing vessel of <fishing nation>;
  - (iii) the prompt and full adjudication in <fishing nation> of any claim made pursuant to this Agreement; and
  - (iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Agreement.
- (c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of <fishing nation> incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Government of <coastal State> as soon as possible following the date that the amount is collected.

9.6 The Government of <fishing nation> shall take all necessary measures, in accordance with the relevant laws and regulations of <fishing nation>, to facilitate prompt and adequate settlement of a claim for loss or damage on the part of the Government of <coastal State> or <coastal State> citizens for which fishing vessels of <fishing nation> are responsible while within the <coastal State> EEZ for the purpose of fishing operations.

- 9.7 The Government of <fishing nation> shall ensure that an agent is appointed and maintained with authority to receive and respond to any legal process issued by the Government of <coastal State> in respect of the operator of any fishing vessel of <fishing nation> and shall notify the Government of <coastal State> of the name and address of such agent, who shall be located in <capital or port of coastal State> for the purpose of receiving and responding to any legal process issued in accordance with this article.
- 9.8 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. In cases of serious violations, such sanctions shall include refusal withdrawal or suspension of authorization to fish. 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.
- 9.9 The Government of <fishing nation> shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to the Government of <coastal State>, and restrictions on trade, as a result of any enforcement measure taken by the Government of <coastal State> in accordance with this Article.

## **ARTICLE 10: LICENSING AND FEES**

- 10.1. Fishing activities by vessels of <fishing nation> in <coastal State> fishing zone pursuant to this Agreement shall be subject to possession of a valid fishing license issued by the Government of <coastal State>.
- 10.2 Licenses will be issued by the authorities of <coastal State> within the limits established in the Annex attached hereto.
- 10.3 The <fishing nation> shall present to the <coastal State> fisheries authorities an application for each vessel that wishes to fish pursuant to this Agreement, drawn up by the owner, at least 20 days before the date of commencement of the period of validity requested. The applications shall be made on the forms provided for that purpose by <coastal State>, a specimen of which is annexed hereto.

- 10.4 Each license shall be accompanied by proof of payment of the fee for the period of the license's validity.
- 10.5 License fees shall be calculated in accordance with the schedule in the Annex to this Agreement.
- 10.6 Before receiving a license and no more than once a year, each trawler and demersal longliner must be presented at a designated port of <coastal state> for inspection in accordance with the rules and regulations in force. This inspection shall be carried out within 24 hours of the vessel's arrival in port. The expenses incurred shall be borne by the ship owners and are established at <number and currency> per vessel.
- 10.7 Every license shall be issued to the shipowner for one designated vessel.
- 10.8 The fishing license shall be issued by authorities of <coastal state> and delivered to the shipowners or their representatives within 30 days of receipt of payment.
- 10.9 Licenses shall be valid for a period of one year and shall be renewable.

## **ARTICLE 11: VESSEL REPORTING REQUIREMENTS**

- 11.1 The operator of every vessel issued with a permit to fish pursuant to this Agreement shall provide to the Director information relating to the position and catch on board, of the vessel by facsimile, telex or cable in the form prescribed in Appendix F at the following times:
- (a) on entry into the EEZ;
  - (b) <daily> <weekly> while within the EEZ;
  - (c) at least 24 hours prior to the estimated time of entry into any port in <coastal State>;
  - (d) upon departure from the EEZ;
  - (e) immediately upon entry into or departure from a closed area within the EEZ;
  - (f) at least 24 hours prior to refueling from a licensed tanker; and
  - (g) immediately after refueling from a licensed tanker or not later than 12:00 noon on the following day.
- 11.2 Within 24 hours of the completion of a fishing trip a trip completion report shall be transmitted to the Director in the form prescribed in Appendix F.

- 11.3 The operator of every vessel licensed to fish pursuant to this Agreement shall duly complete in the English language a daily report in the form prescribed in Appendix G of all catch in the EEZ and (where in the course of a fishing trip the vessel fishes on the high seas and in the EEZ) on the high seas and shall certify that the information contained in such reports is true, complete and accurate.
- 11.4 The catch report form referred to in Paragraph 3 shall be forwarded to the Director within 45 days of the completion of each fishing trip.
- 11.5 Every vessel issued with a permit pursuant to this Agreement shall maintain on board current fishing logs which can be easily understood by observers and authorized officers of the Government of <coastal State>. Such logs shall contain, in English, a record of every instruction, direction or requirement communicated to the master by <coastal State> authorities while the vessel is in the EEZ as well as the following information relating to the activities of the vessel during the day:
- (a) the fishing effort of the vessel;
  - (b) the method of fishing used;
  - (c) the areas in which fishing was undertaken;
  - (d) the quantity of each type of fish taken, including the quantity of non-target species and immature fish; and
  - (e) such other information as the Director may from time to time require.

## **ARTICLE 12: COOPERATION IN SCIENTIFIC RESEARCH**

- 12.1. The Government of <fishing nation> shall cooperate with the Government of <coastal State> in the planning and conduct of scientific research for the purposes of effective conservation and optimum utilization of the living resources within the <coastal State> EEZ. Such research shall include sampling of catches and disposition of catches as well as collection and analysis of data on the state of stocks in the fisheries to which access is granted under this Agreement .
- 12.2 The Government of <fishing nation> shall make available to the Government of <coastal State> all statistical and biological information generated by the research conducted in accordance with paragraph 1 and such additional information as may be required by the Government of <coastal State> for the purposes of conserving and managing the living resources within the <coastal State> EEZ.

## ARTICLE 13: MONITORING, CONTROL AND SURVEILLANCE

13.1 <Coastal State> and <fishing nation> shall establish a working group which shall draft a joint plan to increase the monitoring, control and surveillance (MSC) capabilities of <coastal State> to a level adequate to enforce its fishing laws and regulations effectively. The joint plan shall include provisions for implementation and financing of the actions necessary to reach the goal of adequate MSC capabilities for <coastal State>.

[13.1 ALTERNATIVE: <Coastal State> and <fishing nation> shall establish a joint commission which shall draft a joint plan to increase the monitoring, control and surveillance capabilities of <coastal State> to a level adequate to enforce its fishing laws and regulations effectively through contracting the functions of monitoring, control and surveillance to a private contractor on an interim basis. The joint commission shall consult with other coastal states in the <region/subregion> in regard to possible multilateral cooperation in regard to such a contractual arrangement. The joint plan shall include provision for the use of financial compensation received under this Agreement from <fishing nation> for this purpose.]

13.2 A vessel monitoring system shall be operated by <coastal State> for the purpose of obtaining real-time information on the location of vessels of <fishing nation> fishing within the waters of <coastal State> pursuant to this Agreement in accordance with the following provisions:

- (a) The operator of each vessel of <fishing nation> licensed to fish within the fishing zone of <coastal State> shall apply for registration of an Automatic Location Communicator (ALC) on the prescribed forms for each year; install and operate a registered ALC on board the vessel; and maintain the ALC in good working order.
- (b) The operator of each fishing vessel licensed to fish within the fishing zone of <coastal State> shall not interfere with, tamper with, alter, damage or disable the ALC; move or remove the ALC from the agreed installed position without the prior permission of the licensing company; or impede the operation of the ALC.
- (c) At least <number> hours prior to entry into the exclusive economic zone of <coastal State>, the operator of each fishing vessel licensed to fish within the fishing zone of <coastal State> shall ensure that

the ALC is switched on and is operating appropriately at all times when the vessel is in the above-mentioned fishing zone.

- (d) The operator of each fishing vessel licensed to fish within the fishing zone of <coastal State>, upon notification by <coastal State> that the vessel's ALC has failed to transmit, shall ensure that position reports are communicated to fisheries authorities of <coastal State>.
- (e) If it is not possible to make position reports, or if fisheries authority of <coastal State> directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to port.

## **ARTICLE 14: OBSERVERS**

- 14.1 Upon request by the Government of <coastal State> duly authorized observers shall be placed on board vessels issued fishing licenses pursuant to this Agreement.
- 14.2 The operators of vessels on which observers have been placed pursuant to paragraph 14.1 shall provide the observers, while on board their vessels, with food, accommodation, and medical facilities of such reasonable standard equivalent to that provided for the officers of the vessels, at no expense to the Government of <coastal State>. The operators shall pay the full cost of the observers, including:
  - (a) full travel costs to and from <coastal State> and the port of embarkation/disembarkation;
  - (b) salary; and
  - (c) full insurance coverage
- 14.3 The operator and each member of the crew of a vessel issued fishing licenses pursuant to this Agreement, while operating in the <coastal State> fishing zone, shall allow and assist observers placed on board pursuant to paragraph 14.1 to:
  - (a) Board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Government of <coastal State> to the vessel master;
  - (b) Have full access to and use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties, provided that the observer shall neither interfere with the lawful operation of the vessel nor violate relevant laws and regulations of <fishing nation>;

- (c) Have full access to the vessel's records, including its log books and other documentation for the purpose of inspection or copying; and
  - (d) Gather any other information relating to fisheries in the EEZ without unduly interfering with the lawful operation of the vessel.
- 14.4 No operator or crew member of a vessel on which an observer is placed shall assault, obstruct, resist, deny, refuse boarding to, intimidate or otherwise interfere with an observer in the performance of his or her duties.

## **ARTICLE 15: ENFORCEMENT AND PENALTIES**

- 15.1 It is recognized that the Government of <coastal State> may enforce the provisions of this Agreement and permits issued thereunder, in waters under its jurisdiction. Nationals and fishing vessels of <fishing nation> which do not comply with the provisions of this Agreement shall be subject to fines and other penalties in accordance with the <coastal State> legislation.
- 15.2 The Government of <coastal State> shall give prompt notification through diplomatic channels informing the Government of <fishing nation> of the arrest or seizure of a fishing vessel of <fishing nation> or any of its crew and of any charges filed or proceedings instituted following the arrest.
- 15.3 Fishing vessels of <fishing nation> and their crews arrested for breach of this Agreement shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied for fishing violations shall not include imprisonment or corporal punishment.
- 15.4 Measures taken by <coastal State> to regulate fishing, including measures involving partial cessation of fishing activities or biological recovery of particular species, shall not discriminate against vessels of <fishing Nation>.

## **ARTICLE 16: TRANSHIPMENT**

- 16.1 Vessels issued fishing licenses under this Agreement shall not transship at sea except by a specified type of vessel to its licensed carrier vessel, and except under the following supervised situations: [ ].

- 16.2 The operator of any vessel intending to transship in accordance with Paragraph 1 of this Article shall notify the Director by facsimile, telex or cable of the intention to do so at least [ ] hours prior to the estimated time of the transshipment and shall identify the location of the planned transshipment.
- 16.3 Except for transshipment of catch carried out in accordance with Paragraphs 1 and 2 of this Article, transshipment of catch may take place only at a port designated by the Government of <coastal State>. A list of designated ports will be provided to all vessels issued fishing licenses. The operator of any vessel intending to transship in a designated port shall notify the Director by facsimile, telex or cable of the intention to enter port at least 24 hours prior to the estimated time of entry into port.
- 16.4 The operator, master or appointed agent of the vessel shall provide to the Director information relating to the catch transshipped in such form as may be prescribed by the Director. Such information shall include details of the catch transshipped by weight by species, reject catch, cargo manifest and packing list for onward shipment and final destination of the catch transshipped.
- 16.5 Vessels permitted to transship catch in <coastal State> shall purchase all of their provisions, including water, bait, electrical power and fuel from sources in <coastal State> as far as such are available in reliable quantities and quality and at competitive prices. At the request of the Director, Association vessels permitted to transship catch in <coastal State> shall make available, at the prevailing domestic market price, a portion of the catch on board for domestic consumption in <coastal State>.

## **ARTICLE 17: DISCARDS, WASTE AND NON-TARGET SPECIES**

- 17.1 <Fishing nation> vessels authorized to fish pursuant to this Agreement shall adopt all reasonable measures to minimize catches of non-target species, including the use of equipment and techniques shown to be effective in minimizing catches of non-target species.
- 17.2 The operators of all <fishing nation> vessels authorized to fish pursuant to this Agreement shall report full details of all catches of non-target species, including non-fish species.

- 17.3 Vessels fishing for <specific species or category> may not hold on board catch of <non-target species> amounting to more than [ ].
- 17.4 In order to reduce catch of juveniles and non-target species, minimum authorized mesh size(s) for <specific species or categories to be identified> shall be: [ ] mm.
- 17.5 Discards of non-target catch are prohibited. When a vessel reaches the limit set in paragraph 3 of this Article, it shall discontinue fishing operations and return to port, or it shall move to another fishing area prescribed by the <coastal State>.

## ARTICLE 18: PORT ACCESS

Subject to the availability of facilities and the needs of <coastal State> vessels, the Government of <coastal State> undertakes to authorize, in accordance with the relevant laws and administrative requirements of <coastal State>, fishing vessels of <fishing nation> to enter the ports of <coastal State> for the purpose of obtaining supplies and services, repairing their vessels and fishing gear, taking on board or discharging their crew, transshipping their catch and for other reasonable purposes.

## ARTICLE 19: DISPUTE RESOLUTION

- 19.1 In the event of any dispute arising as to the interpretation or application of any of the provisions of this Agreement, the Government of <fishing nation> and the Government of <coastal State> shall endeavor to settle it by peaceful negotiations between themselves. Such negotiations shall begin within sixty days after one Government receives a formal request for the opening of negotiations from the other.
- 19.2 In the event that the Government of <fishing nation> and the Government of <coastal State> are unable to resolve the dispute within [ ] months from the receipt of the formal request for the opening of negotiations, they shall submit: In the event that the non-binding mediation fails to resolve the dispute within [ ] days the dispute shall be submitted within [ ] days of the expiry of that period to a dispute resolution arbitration panel for binding arbitration in accordance with Annex VIII of the United Nations Convention on the Law of the Sea. The government of <fishing nation> and the government of <coastal State> shall accept the decision of the arbitration panel in the case as final.

[19.2 FIRST ALTERNATIVE: In the event that the Government of <fishing nation> and the government of <coastal State> are unable to resolve the dispute within [months] from the receipt of the formal request for the opening of negotiations, they shall submit the dispute within [ ] days of the expiry of that period to an arbitration panel chosen under Annex VIII of the United Nations Convention on the Law of the Sea. The government of <fishing state> and the government of <coastal State> shall accept the decision of the arbitration panel as final.]

[19.2 SECOND ALTERNATIVE: In the event that the government of <fishing nation> and the government of <coastal State> are unable to resolve the dispute within [ ] months from the receipt of the formal request for the opening of negotiations, they shall submit the dispute within [ ] days of the expiry of that period to the International Tribunal for the Law of the Sea (ITLOS), and both parties shall accept the decision of the ITLOS as final.]

## **ARTICLE 20: TRANSPARENCY AND CONFIDENTIALITY**

- 20.1 This agreement shall be published by <coastal State> and <fishing nation> in a form accessible to the public.
- 20.2 All information, data and statistics received by the Government of <coastal State> pursuant to this Agreement shall become the property of the Government. However, the Government undertakes that all such information, data and statistics, except for aggregate statistics on fishing capacity and catch by fishery of vessels authorized to fish pursuant to this Agreement, will remain confidential to the Parties to this Agreement and shall not be disclosed to any third party without the prior consent in writing of the <fishing nation>.
- 20.3 The Government of <coastal State> reserves the right to publish aggregate data on fishing capacity and catch by fishery pursuant to this Agreement.

## **ARTICLE 21: ENTRY INTO FORCE, REVIEW AND RENEWAL**

- 21.1 This Agreement shall enter into force on the date of signature.
- 21.2 This Agreement shall remain in force for a period of <number> years.
- 21.3 Before the end of the initial period of <number> years, the Contracting Parties shall enter into consultations to review the scientific data available to them regarding the state of fish stocks in the fisheries to which vessels of <fishing nation> have been given access pursuant to this Agreement and the data on catch and effort that has been accumulated during the initial period of implementation.
- 21.4 Based on this review, the Parties to this Agreement shall determine by mutual agreement whether the Agreement should be renewed and, if so, what corrective actions are required to address issues raised in the review, including, as appropriate, amendments or additions to the Protocol or the Annex.

## **ARTICLE 22: RELATIONSHIP TO OTHER AGREEMENTS**

Nothing in this Agreement shall be deemed to affect other existing international agreements on the conservation of fishery resources to which <fishing nation> and <coastal State> are parties or to prejudice the views or positions of either Government in regard to any question of the law of the sea related to the 1982 United Nations Convention on the Law of the Sea.

# MODEL AGREEMENT NUMBER TWO

## Government to Government Access Agreement with Subsidiary Agreement

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## MODEL AGREEMENT ON FISHERIES BETWEEN THE GOVERNMENT OF <FISHING NATION> AND THE GOVERNMENT OF <COASTAL STATE>

**The Government of < > and the Government of < >,**

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

*Recognizing* that <coastal State> has established a 200 nautical mile exclusive economic zone<sup>1</sup> within which <coastal State> exercises, in accordance with international law, sovereign rights for the purposes of exploring and exploiting, conserving and managing the living resources therein (hereinafter referred to as “the <coastal State> EEZ”),

*Considering* their common concern for the sustainable management, conservation and utilization of the fishery resources of the <coastal State> EEZ,

*Desiring* to establish reasonable terms and conditions under which fishing vessels and nationals of <fishing nation> may be granted access to the surplus catch in the <coastal State> EEZ,

*Committed* to responsible fisheries,

*Affirming* their wish to establish mutually beneficial cooperation in the field fisheries, thereby enhancing friendly relations between <coastal State> and <fishing nation>,

Have agreed as follows:

---

1. Alternatively exclusive fisheries zone

## ARTICLE 1: PURPOSE

The purpose of this Agreement is to promote effective conservation and sustainable use of the fisheries resources of mutual interest in the <coastal State> EEZ, to facilitate the rapid and full development of the <coastal State> fishing industry, and to establish a common understanding of the principles and procedures under which fishing may be allowed to continue by nationals and fishing vessels of <fishing nation> for the marine living resources over which <coastal State> exercises sovereign rights.

## ARTICLE 2: BILATERAL CONSULTATIONS

- 2.1 The Government of <fishing nation> and the Government of <coastal State> shall hold bilateral consultations from time to time concerning fishing by nationals and fishing vessels of <fishing nation> within the <coastal State> EEZ and regarding the implementation of this Agreement.
- 2.2 In such consultations, the two Governments shall, *inter alia*, examine the possibility of developing broader cooperation in the field of fisheries, including in particular:
  - (a) Exchanges of technical information and personnel, including training;
  - (b) The facilitation of cooperative arrangements between <fishing nation> and <coastal State> enterprises for the harvesting of marine living resources from the <coastal State> EEZ and for the utilization, processing and marketing of catches from the <coastal State> EEZ;
  - (c) The use of canning, transshipment, shipping and repair facilities located in <coastal State>;
  - (d) The purchase of equipment and supplies located in <coastal State>;
  - (e) Greater involvement of <coastal State> nationals in fisheries, including through employment as crew members on board licensed <fishing nation> fishing vessels; and
  - (f) The improvement of existing fishing port facilities.

## **ARTICLE 3: ACCESS AUTHORIZATION/ FISHING OPPORTUNITIES**

- 3.1 The Government of <coastal State> is willing to allow access for fishing vessels of <fishing nation> to harvest, in accordance with the terms and conditions to be established in fishing permits issues pursuant to article [ ], that portion of the total allowable catch for a specific fishery resource that will not be harvested by fishing vessels of <coastal State> and may be made available to fishing vessels of <fishing nations> in accordance with paragraph 2 below. Only vessels flying the flag of <fishing nation> shall be authorized to fish under the agreement.
- 3.2 The Government of <coastal State> shall determine each year in the exercise of its sovereign rights in respect of the living resources within the <coastal State> EEZ:
- (a) the maximum sustainable level of catch for each fishery resource under its sovereign jurisdiction, taking into account the best available scientific information on the state of stocks and the application of the precautionary approach;
  - (b) the total fishing capacity of fishing vessels of <coastal State> in respect of each fishery resource; and
  - (c) the portion of the total allowable catch for a specific fishery resource that may be made available, on a periodic basis each year, to foreign fishing vessels.
- 3.3 The <coastal State> shall maintain a complete register of fishing vessels licensed to fish in its waters under this agreement during the first year of the Agreement, which shall include information on engine size, hold capacity and other on-board technologies for each vessel, which shall be updated annually. The <coastal State> shall use this data to calculate, on an annual basis, the total number of fishing vessels of <fishing Nation> that can be permitted access consistent with the total allowable catch to be made available to the fishing vessels of <fishing nation>.
- (a) In the event that the total capacity of <fishing nation> vessels already authorized to fish in <coastal State> waters pursuant to this Agreement shall be determined by <coastal State> to be in excess of a level of capacity that is commensurate with the maximum sustainable level of catch established pursuant to paragraph 3.2 above, the <coastal State> shall make whatever reduction in the number of

<fishing nation> vessels authorized to fish in <coastal State> waters may be necessary to reduce total fishing capacity in its waters to a level consistent with the aforementioned sustainable level of catch by issuing fewer fishing licenses to fishing vessels of <fishing nation>.

- (b) If the <coastal State> determines that the state of fish stocks has improved sufficiently, it may increase the level of fishing capacity of vessels of <fishing nation> authorized to fish in <coastal State> waters by increasing the number of fishing licenses to fishing vessels of <fishing nation>.

## **ARTICLE 4: PROCEDURES FOR FISHING LICENSES AND FEES**

- 4.1 The procedures for the conduct of fishing operations by fishing vessels of <fishing nation> within the <coastal State> EEZ and for the issuance of permits by the Government of <coastal State> and the <fishing industry association> of <fishing nation> {hereinafter referred to as «the subsidiary agreement»}.
- 4.2 Where fees have been paid at the established rates agreed upon between the Government of <coastal State> and <fishing nation>, the Government of <coastal State> shall, in accordance with the relevant laws and regulations of <coastal State> and the provisions of the subsidiary agreement, issue permits to fishing vessels of <fishing nation> to engage in fishing within the <coastal State> EEZ.

## **ARTICLE 5: COMPLIANCE WITH LAWS OF <COASTAL STATE>**

The Government of <coastal State> shall require compliance by fishing vessels of <fishing nation> engaged in fishing within the <coastal State> EEZ with all laws and regulations of <coastal State> applicable to foreign fishing vessels within the <coastal State> EEZ. The Government of <coastal State> shall notify the Government of <fishing nation> of new laws relating to fisheries in force in waters under its jurisdiction.

## **ARTICLE 6: FLAG STATE RESPONSIBILITY**

- 6.1 The Government of <fishing nation> shall enforce the provisions of this Agreement and licenses issued thereunder. The Government of <fishing nation> shall take the necessary steps to ensure:
- (a) that its nationals and fishing vessels shall not engage in fishing within the <coastal State> EEZ, unless duly issued with permits pursuant to this Agreement;
  - (b) that each fishing vessel of <fishing nation> issued with a permit to fish within the <coastal State> EEZ complies with the provisions of this Agreement and any subsidiary agreement issued pursuant to this Agreement; and
  - (c) that persons on board fishing vessels of <fishing nation> within the <coastal State> EEZ allow boarding and comply with the instructions of duly authorized <coastal State> officials for the purposes of inspection and enforcement.
- 6.2 The Government of <fishing nation> shall, at the request of the Government of <coastal State>, fully investigate any alleged infringement of this Agreement involving a fishing vessel of <fishing nation>, and report as soon as practicable and in any case within two months to the Government of <coastal State> on that investigation and on any action taken or proposed to be taken by the Government of <fishing nation> in relation to the alleged infringement.
- 6.3 In the event that a report provided pursuant to paragraph 2 of this article shows that there exists probable cause to believe that a fishing vessel of <fishing nation> has been involved in an infringement of this Agreement, including a violation of the laws and regulations of <coastal State>, and that the vessel has not submitted to the jurisdiction of <coastal State>, the Government of <fishing nation> shall, at the request of the Government of <coastal State>, take all necessary measures to ensure that the vessel concerned submits to the jurisdiction of <coastal State> or is penalized by the Government of <fishing nation> at such level as may be provided for like violations in <fishing nation> law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of <fishing nation> and that the vessel does not engage in fishing operations on the high seas until such time that it is in full compliance with all outstanding sanctions imposed by the Government of <fishing nation> in respect of the violation.

- 6.4 The Government of <fishing nation> and the Government of <coastal State> shall, to the extent permitted by their national laws and regulations, establish arrangements for making available to the prosecuting authorities of each Government evidence relating to alleged violations of this Agreement.
- 6.5 The Government of <fishing nation> shall ensure that:
- (a) each fishing vessel of <fishing nation> issued with a permit pursuant to this Agreement is fully insured against all risks and liabilities, including, but not limited to, collision, protection and indemnity and oil pollution liability insurance;
  - (b) all measures are taken to facilitate:
    - (i) any claim arising out of the activities of a fishing vessel of <fishing nation>, including a claim for the total market value of any fish taken from the <coastal State> EEZ without authorization pursuant to this Agreement, and the prompt settlement of that claim;
    - (ii) the service of legal process by or on behalf of a national or the Government of <coastal State> in any action arising out of the activities of a fishing vessel of <fishing nation>;
    - (iii) the prompt and full adjudication in <fishing nation> of any claim made pursuant to this Agreement; and
    - (iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Agreement.
  - (c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of <fishing nation> incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Government of <coastal State> as soon as possible following the date that the amount is collected.
- 6.6 The Government of <fishing nation> shall take all necessary measures, in accordance with the relevant laws and regulations of <fishing nation>, to facilitate prompt and adequate settlement of a claim for loss or damage on the part of the Government of <coastal State> or <coastal State> citizens for which fishing vessels of <fishing nation> are responsible while within the <coastal State> EEZ for the purpose of fishing operations.

- 6.7 The Government of <fishing nation> shall ensure that an agent is appointed and maintained with authority to receive and respond to any legal process issued by the Government of <coastal State> in respect of the operator of any fishing vessel of <fishing nation> and shall notify the Government of <coastal State> of the name and address of such agent, who shall be located in <capital or port of coastal State> for the purpose of receiving and responding to any legal process issued in accordance with this Article.
- 6.8 All investigations and judicial proceedings by the Government of <fishing nation> in respect of violations 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. In cases of serious violations, such sanctions shall include refusal withdrawal or suspension of authorization to fish. 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.
- 6.9 The Government of <fishing nation> shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to the Government of <coastal State>, and restrictions on trade, as a result of any enforcement measure taken by the Government of <coastal State> in accordance with this Article.

## ARTICLE 7: ENFORCEMENT AND PENALTIES

- 7.1 It is recognized that the Government of <coastal State> may enforce the provisions of this Agreement and permits issued thereunder, in waters under its jurisdiction. Nationals and fishing vessels of <fishing nation> which do not comply with the provisions of this Agreement shall be subject to fines and other penalties in accordance with the <coastal State> legislation.
- 7.2 The Government of <coastal State> shall give prompt notification through diplomatic channels informing the Government of <fishing nation> of the arrest or seizure of a fishing vessel of <fishing nation> or any of its crew and of any charges filed or proceedings instituted following the arrest.

- 7.3 Fishing vessels of <fishing nation> and their crews arrested for breach of this Agreement shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied for fishing violations shall not include imprisonment or corporal punishment.
- 7.4 Measures taken by <coastal State> to regulate fishing, including measures involving partial cessation of fishing activities or biological recovery of particular species, shall not discriminate against vessels of <fishing Nation>.

## **ARTICLE 8: COOPERATION IN SCIENTIFIC RESEARCH**

- 8.1 The Government of <fishing nation> shall cooperate with the Government of <coastal State> in the planning and conduct of scientific research for the purposes of effective conservation and optimum utilization of the living resources within the <coastal State> EEZ. Such research shall include sampling of catches and disposition of catches as well as collection and analysis of data on the state of stocks in the fisheries to which access is granted under this Agreement .
- 8.2 The Government of <fishing nation> shall make available to the Government of <coastal State> all statistical and biological information generated by the research conducted in accordance with paragraph 8.1 and such additional information as may be required by the Government of <coastal State> for the purposes of conserving and managing the living resources within the <coastal State> EEZ.

## **ARTICLE 9: PORT ACCESS**

Subject to the availability of facilities and the needs of <coastal State> vessels, the Government of <coastal State> undertakes to authorize, in accordance with the relevant laws and administrative requirements of <coastal State>, fishing vessels of <fishing nation> to enter the ports of <coastal State> for the purpose of obtaining supplies and services, repairing their vessels and fishing gear, taking on board or discharging their crew, transshipping their catch and for other reasonable purposes.

## **ARTICLE 10: DISPUTE RESOLUTION**

- 10.1 In the event of any dispute arising as to the interpretation or application of any of the provisions of this Agreement, the Government of <fishing nation> and the Government of <coastal State> shall endeavor to settle it by peaceful negotiations between themselves. Such negotiations shall begin within sixty days after one Government receives a formal request for the opening of negotiations from the other.
- 10.2 In the event that the Government of <fishing nation> and the Government of <coastal State> are unable to resolve the dispute within [ ] months from the receipt of the formal request for the opening of negotiations, they shall submit: In the event that the non-binding mediation fails to resolve the dispute within [ ] days the dispute shall be submitted within [ ] days of the expiry of that period to a dispute resolution arbitration panel for binding arbitration in accordance with Annex VIII of the United Nations Convention on the Law of the Sea. The government of <fishing nation> and the government of <coastal State> shall accept the decision of the arbitration panel in the case as final.

[10.2 FIRST ALTERNATIVE: In the event that the Government of <fishing nation> and the government of <coastal State> are unable to resolve the dispute within [months] from the receipt of the formal request for the opening of negotiations, they shall submit the dispute within [ ] days of the expiry of that period to an arbitration panel chosen under Annex VIII of the United Nations Convention on the Law of the Sea. The government of <fishing state> and the government of <coastal State> shall accept the decision of the arbitration panel as final.]

[10.2 SECOND ALTERNATIVE: In the event that the government of <fishing nation> and the government of <coastal State> are unable to resolve the dispute within [ ] months from the receipt of the formal request for the opening of negotiations, they shall submit the dispute within [ ] days of the expiry of that period to the International Tribunal for the Law of the Sea (ITLOS), and both parties shall accept the decision of the ITLOS as final.]

## ARTICLE 11: RELATIONSHIP TO OTHER AGREEMENTS

Nothing in this Agreement shall be deemed to affect other existing international agreements on the conservation of fishery resources to which <fishing nation> and <coastal State> are parties or to prejudice the views or positions of either Government in regard to any question of the law of the sea related to the 1982 United Nations Convention on the Law of the Sea.

## ARTICLE 12: ENTRY INTO FORCE, REVIEW AND RENEWAL

- 12.1 This Agreement shall enter into force on the date of signature.
- 12.2 This Agreement shall remain in force for a period of <number> years.
- 12.3 Before the end of the initial period of <number> years, the Contracting Parties shall enter into consultations to review the scientific data available to them regarding the state of fish stocks in the fisheries to which vessels of <fishing nation> have been given access pursuant to this Agreement and the data on catch and effort that has been accumulated during the initial period of implementation.
- 12.4 Based on this review, the Parties to this Agreement shall determine by mutual agreement whether the Agreement should be renewed and, if so, what corrective actions are required to address issues raised in the review, including, as appropriate, amendments or additions to the Protocol or the Annex.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at <coastal State> this \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_



**MODEL SUBSIDIARY AGREEMENT BETWEEN THE  
GOVERNMENT OF <COASTAL STATE> AND THE  
<NATIONAL FISHERIES ASSOCIATION OF FISHING  
NATION> CONCERNING FISHING ACTIVITIES  
IN THE EXCLUSIVE ECONOMIC ZONE OF  
<COASTAL STATE>**

The Government of <coastal State> of the one part and the <National Fisheries Association of Fishing Nation> (hereinafter referred to as “the Association”) of the other part;

*Pursuant* to the provisions of paragraph 1 of Article 3 of the Agreement on Fisheries between the Government of <fishing nation> and the Government of <coastal State> done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_ (hereinafter referred to as “the Head Agreement”)

*Recognizing* that <coastal State> has established a 200 nautical mile exclusive economic zone<sup>2</sup> within which <coastal State> exercises, in accordance with international law, sovereign rights for the purposes of exploring and exploiting, conserving and managing the living resources therein (hereinafter referred to as “the <coastal State> EEZ”),

*Wishing* to establish the detailed terms, conditions and procedures for the conduct of fishing activities by fishing vessels owned or operated by members of the Association (hereinafter referred to as “Association vessels”) within the <coastal State> EEZ,

Have agreed as follows:

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2. Alternatively exclusive fisheries zone

## ARTICLE 1: JURISDICTION AND DEFINITIONS

- 1.1 The Association and its members recognize and accept the sovereign jurisdiction of <coastal State> over the marine living resources within the EEZ in accordance with <national legislation> (hereinafter referred to as “the Act”) and international law.
- 1.2 Save as hereinafter provided the Association and its members shall comply with all relevant provisions of the Act and regulations made thereunder and the terms and conditions of this Agreement. The Government shall supply the Association with a copy of the Act and all relevant regulations made thereunder.
- 1.3 Except as hereinafter provided all definitions of terms and phrases set forth in the Act shall apply to this Agreement:
- 1.4 For the purposes of this Agreement:
  - (a) “Director” means the Director of Fisheries;
  - (b) “fishing” means:
    - (i) searching for, catching, taking or harvesting fish;
    - (ii) attempting to search for, catch, take or harvest fish;
    - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
    - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
    - (v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transshipment;
    - (vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel;
  - (c) “fishing vessel” means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations;
  - (d) “fishing trip” means any period commencing with the departure of the vessel from port for the purposes of beginning a fishing trip to such time as any or all of the fish on board the vessel are unloaded from the vessel, either ashore or onto another vessel;

- (e) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master; and
  - (f) “transshipment” means the unloading of all or any of the fish on board a vessel to another vessel either at sea or in port.
- 1.5 This Agreement includes the Schedule and Appendices to this Agreement which shall be an integral part hereof.

## **ARTICLE 2: SCOPE**

This Agreement shall cover fishing for <tuna and tuna-like species (including billfish and other incidental bycatch)> in the <coastal State> EEZ by Association vessels using the <pole and line, long-line or purse seine> methods of fishing only. No fishing activities will be permitted in the internal waters and territorial sea of <coastal State>.

## **ARTICLE 3: RESPONSIBILITIES OF THE ASSOCIATIONS**

- 3.1 The Association shall ensure that its members and Association vessels do not fish in the <coastal State> EEZ without first obtaining fishing permits in accordance with this Agreement.
- 3.2 The Association shall ensure that its members and Association vessels comply with all applicable laws and regulations of <coastal State>, including the provisions of this Agreement.
- 3.3 In the event that a judgment or other determination has been duly entered against an Association vessel, its crew or officers by the courts of <coastal State> for any violations of applicable laws or regulations, the Association of which that vessel is a member shall be liable for prompt satisfaction of such judgment or determination. Under such circumstances the Association concerned shall undertake best efforts for prompt satisfaction of such judgment or other determination by the member concerned.
- 3.4 The Association shall, at the request of the Government, take all reasonable measures to assist in the investigation of an alleged breach of any applicable laws and regulations of <coastal State> including an alleged breach of any provision of this Agreement by an Association vessel, its crew or officers and shall promptly communicate all the requested information to the Government.

3.5 The Association shall appoint and maintain for the duration of this Agreement an agent who is resident in <coastal State> and is authorised to act on behalf of the owner, master or charterer of each Association vessel issued with a permit pursuant to this Agreement and who is able to accept legal responsibility on behalf of the owner, master or charterer for any action, juridical or otherwise, taken in respect of that vessel. The name and address of such agent shall be notified to the Director and any communication, information, document, direction, request or response to or from that agent shall be deemed to have been sent to or received from the owner, master or charterer of the Association vessel concerned, as the case may be.

[3.5 ALTERNATIVE: The Association shall appoint and maintain an agent in <coastal State> who is authorized to receive and respond to any legal process issued in <coastal State> with respect to Association vessels and their operators or crew.]

3.6 The Association shall take necessary steps to ensure that each Association vessel authorized to fish pursuant to this Agreement is appropriately and adequately insured against all risks and liabilities including, but not limited to, collision, protection and indemnity, and oil pollution liability insurance.

## ARTICLE 4: ISSUE OF FISHING PERMITS AND FEES

### A. Registration

4.1 Before an Association vessel may be issued with a permit to fish pursuant to this Agreement, the operator of the vessel shall make application, through the Association, to the Government for registration of the vessel. Applications for registration shall be made to the Director by registered mail, facsimile, telex or cable in the form specified in Appendix A. In the case of registered mail, details of the name of the vessel, call sign or signal letters, and remittance number of the registration fee shall be sent to the Director by facsimile, telex or cable on the date of mailing of the application. The registration fee shall be fixed at ... ¥ in the case of a purse seine vessel, ¥ in the case of a long line vessel,... ¥ and ... ¥ in the case of a pole and line vessel.

- 4.2 Upon determination by the Government that the vessel is qualified to be registered, a registration certificate shall be issued in the form set out in Appendix B. The issuance of the registration certificate shall be at the discretion of the Government. An application for registration may be rejected by the Government if it is not in accordance with the terms and conditions of this Agreement, the laws and regulations of <coastal State> with regard to the EEZ, or because of prior breach of this Agreement.
- 4.3 The Government shall inform the applicant through the Association of the registration number or of rejection of the registration application within two (2) weeks after the date of the postmark of the registration application where the application has been made by registered mail or four (4) working days of the receipt of the application where the application has been made by facsimile, telex or cable.

#### **B. Issue of Permit: Long-Line Vessels and Pole and Line Vessels**

- 4.4 Where a vessel has been duly registered in accordance with the foregoing provisions of this Article, the operator may apply, through the Association, for a permit authorising the vessel to fish in the EEZ for the duration of one fishing trip. The operator shall submit, through the Association, an application for a permit to the Director by facsimile, telex or cable in the form prescribed in Appendix C, containing the following information:
- (a) registration number or registration application number when the registration number is not available;
  - (b) name and call sign or signal letter of vessel;
  - (c) amount of permit fee paid, name of bank and the reference number confirming remittance of the permit fee prescribed in Appendix E; and
  - (d) desired effective date of permit.
- 4.5 Upon receiving and accepting the application the Director shall immediately inform the applicant of a permit number through the Association by facsimile, telex or cable. The permit shall be issued to the applicant in the form set out in Appendix D. A permit shall be effective and valid for the period of one (1) fishing trip.

### **C. Issue of Permit – Purse Seine Vessels**

- 4.6 A purse seine vessel that has been duly registered in accordance with the foregoing provisions of this Article may be issued with a permit to fish in the <coastal State> EEZ upon receipt by the Director of a completed permit application form in the form prescribed in Appendix C and the payment of a permit fee of [amount] for each vessel.
- 4.7 A permit issued in respect of a purse seine vessel shall be effective and valid from the date set out on the permit for a period of one year.

### **D. General**

- 4.8 The fees referred to in this Article, including Appendix E hereof, shall be paid in <Japanese Yen> to <account details>.
- 4.9 The Association and its members shall be jointly and severally liable to the Government of <coastal State> for any fee(s) required to be paid pursuant to this Agreement. The said fees shall be non-refundable.
- 4.10 All fees payable by the Association pursuant to this Agreement shall be paid free and clear of any deduction or withholding of any kind whatsoever. In the event that the Government of <fishing nation> or any authority concerned requires the Association to make any deduction or withholding of any kind whatsoever from any payment of fee(s) to the Government of <coastal State> under this Agreement, the sum due from the applicant in respect of such payment shall be increased to the extent necessary to ensure that after making any such deduction or withholding the Government of <coastal State> shall receive a sum equal to the sum which it would have received had no such deduction or withholding been made.
- 4.11 If any approval of the Government of <fishing nation> or any authorities is necessary or desirable for the member or the Association to make payment provided for herein, then the Association shall promptly obtain such approval and thereafter maintain the validity thereof.
- 4.12 The Association shall inform the Government of <coastal State> of any change of particulars of a registered fishing vessel when the said vessel applies for a permit. The Government of <coastal State> may cancel a registration certificate already issued should circumstances so require during the effective period of this Agreement and the Association shall inform the holder of the registration certificate of such cancellation.

- 4.13 Where a registered vessel is lost or transferred to another person by sale or otherwise during the period of validity of the registration certificate and another vessel is acquired in substitution for the said vessel, a new registration certificate may be issued for the remaining portion of the period of validity of the original certificate. In such event the original registration certificate shall be cancelled and returned to the Director.
- 4.14 The transfer or assignment of a registration certificate or licence is prohibited except by inheritance or corporate merger. In the event that a registration certificate or licence is transferred or assigned by inheritance or corporate merger during the period of validity of a registration certificate or licence, a new registration certificate or licence may be issued for the remaining portion of the period of validity of the original registration certificate or licence. In such an event the original registration certificate or license shall be cancelled and returned to the Director.

## **ARTICLE 5: REPORTING CONDITIONS**

- 5.1 The operator of every Association vessel issued with a permit to fish under this Agreement shall provide to the Director information relating to the position of, and catch on board, the vessel by facsimile, telex or cable in the form prescribed in Appendix F at the following times:
- (a) on entry into the EEZ;
  - (b) <daily> <weekly> while within the EEZ;
  - (c) at least 24 hours prior to the estimated time of entry into any port in <coastal State>;
  - (d) upon departure from the EEZ;
  - (e) immediately upon entry into or departure from a closed area within the EEZ;
  - (f) at least 24 hours prior to refuelling from a licensed tanker; and
  - (g) immediately after refuelling from a licensed tanker or not later than 12.00 noon on the following day.
- 5.2 Within 24 hours of the completion of a fishing trip a trip completion report shall be transmitted to the Director in the form prescribed in Appendix F.
- 5.3 The operator of every Association vessel licensed to fish under this Agreement shall duly complete in the English language a daily report in the form prescribed in Appendix G of all catch in the EEZ and (where in the course of a fishing trip the vessel fishes on the high seas and in

the EEZ) on the high seas and shall certify that the information contained in such reports is true, complete and accurate.

- 5.4 The catch report form referred to in paragraph 5.3 shall be forwarded to the Director within 45 days of the completion of each fishing trip.
- 5.5 Every Association vessel issued with a permit pursuant to this Agreement shall maintain on board current fishing logs which can be easily understood by observers and authorized officers of the Government. Such logs shall contain, in English, a record of every instruction, direction or requirement communicated to the master by <coastal State> authorities while the vessel is in the EEZ as well as the following information relating to the activities of the vessel during the day:
  - (a) the fishing effort of the vessel;
  - (b) the method of fishing used;
  - (c) the areas in which fishing was undertaken;
  - (d) the quantity of each species of fish taken; and
  - (e) such other information as the Director may from time to time require.

## ARTICLE 6: OBSERVERS

- 6.1 Upon request by the Government of <coastal State>, duly authorized observers shall be placed on board Association vessels in respect of which permits to fish have been issued under this Agreement.
- 6.2 The operators of Association vessels shall provide the observer, while on board the vessels, at no expense to the Government, with food, accommodation and medical facilities of such reasonable standard equivalent to that provided for the officers of the vessels. The operators shall pay the full costs of the observers, including:
  - (a) full travel costs to and from <coastal State> and the port of embarkation / disembarkation;
  - (b) salary; and
  - (c) full insurance coverage.
- 6.3 The operator and each member of the crew of an Association vessel in respect of which a permit to fish has been issued under this Agreement, while operating in the <coastal State> EEZ, shall allow and assist observers placed pursuant to paragraph 6.1 to:

- (a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Government of <coastal State> to the Association;
  - (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties provided that the observer shall neither interfere with the lawful operation of the vessel nor violate relevant laws and regulations of <fishing nation>;
  - (c) have full access to the bridge, fish on board and areas which may be used to hold, process, weight or store fish;
  - (d) have full access to the vessel's records including its log-books and other documentation for the purpose of inspection or copying; and
  - (e) gather any other information relating to fisheries in the EEZ without unduly interfering with the lawful operation of the vessels.
- 6.4 No operator or crew member of an Association vessel shall assault, obstruct, resist, deny, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.
- 6.5 The Association shall be held responsible for any casualty or personal injury to any observer resulting from the vessel operator's or crew member's negligence; provided, however, that liability of the vessel, her master or her owner under traditional principles of maritime law shall not be affected or diminished.
- 6.6 The Association will not be held responsible for any casualty or personal injury to observers resulting from the observer's own negligence or force majeure.

## **ARTICLE 7: ENFORCEMENT**

- 7.1 Where a permit has been issued under this Agreement, the permit, or a facsimile copy thereof, shall be maintained in good condition and prominently displayed on board the Association vessel in respect of which it is issued. The permit shall be produced on demand to an authorized officer, provided that, in the case of long-line and pole and line vessels, where the vessel is at sea on the date of issue of the registration certificate, production of a permit number, or permit application number in the event the permit number is not yet available, and evidence of the remittance of fees shall be sufficient compliance with the obligation imposed

by this provision. In the event that a registration certificate or permit has not yet been issued the master of the vessel shall indicate so to the Director on entering the EEZ or any part thereof.

- 7.2 The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified Fisheries Officer or Police Office, including to stop, to move to a specified location, and to facilitate safe boarding and inspection of the vessel, its permit, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.
- 7.3 Association vessels authorized to fish under this Agreement shall comply with the 1989 FAO standard specifications for the marking and identification of fishing vessels. In particular the international radio call sign of the vessel, or, if the vessel does not have a radio call sign, its signal letter shall be painted in white on a black background, or in black on a white background on the port and starboard sides of the vessel's hull or superstructure in block letters not less than one (1) metre in height in such a manner that the markings are clearly visible from the air and at sea level. <The <Japanese> <Chinese> <Russian> name of the vessel will be printed clearly in the English language on the bow and the stern of the vessel.>
- 7.4 At all times while the vessel is in the <coastal State> waters all parts of these marking shall be clear, distinct and uncovered.
- 7.5 At the request of the Government of the <coastal State>, approved and duly certified position-fixing and identification equipment shall be installed, maintained in working order and operated on the Association vessels.

## ARTICLE 8: TRANSHIPMENT

- 8.1 Association vessels licensed under this Agreement shall not tranship at sea under any circumstances.

- 8.2 Transshipment of catch may take place only at a port designated by the Government of <coastal State>. A list of designated ports will be provided to the Association. The operator of any Association vessel intending to tranship in a designated port shall notify the Director by facsimile, telex or cable of the intention to enter port at least 24 hours prior to the estimated time of entry into port.
- 8.3 The operator, master or appointed agent of the vessel shall provide to the Director information relating to the catch transhipped in such form as may be prescribed by the Director. Such information shall include details of the catch transhipped by weight by species, rejected catch, cargo manifest and packing list for onward shipment and final destination of the catch transhipped.
- 8.4 Association vessels permitted to tranship catch in <coastal State> shall purchase all of their provisions, including water, bait, electrical power and fuel from sources in <coastal State> as far as such are available in reliable quantities and quality and at competitive prices. At the request of the Director, Association vessels permitted to tranship catch in <coastal State> shall make available, at the prevailing domestic market price, a portion of the catch on board for domestic consumption in <coastal State>.

## **ARTICLE 9: RESTRICTIONS ON FISHING OPERATIONS**

- 9.1 The Association shall ensure that no Association vessel or person on board an Association vessel takes, kills or molests any marine mammal, turtle or sea-bird during any fishing trip during which the vessel enters the EEZ.
- 9.2 In order to protect local and artisanal fishing operations, the Director may from time to time, after consultation with the Association, close certain areas in the EEZ to certain types of fishing operations. Where such closed areas have been established pursuant to this paragraph, the operator shall, at least 24 hours prior to entry into or departure from a closed area, send a notice to the Director in the format set out in Appendix F.
- 9.3 Notwithstanding anything herein contained, fishing is prohibited within a radius of one and a half (1.5) miles of any fish aggregating device deployed within the EEZ. The Director shall notify the Association of the location of any such devices and the Association shall ensure that the operators of Association vessels are kept fully informed of the location of such devices.

## **ARTICLE 10: DISCARDS, WASTE AND NON-TARGET SPECIES**

- 10.1 <Fishing nation> vessels authorized to fish pursuant to this agreement shall adopt all reasonable measures to minimize catches of non-target species, including the use of equipment and techniques shown to be effective in minimizing catches of non-target species.
- 10.2 The operators of all <fishing nation> vessels authorized to fish pursuant to this agreement shall report full details of all catches of non-target species, including non-fish species.
- 10.3 Vessels fishing for <specific species or categories> may not hold on board catch of <non-target species> amounting to more than [ ].
- 10.4 In order to reduce catch of juveniles and non-target species, minimum authorized mesh size(s) for <specific species or categories to be identified> shall be: [ ] mm.
- 10.5 Discards of non-target catch are prohibited. When a vessel reaches the limit set in paragraph 3 of this Article, it shall discontinue fishing operations and return to port, or it shall move to another fishing area prescribed by the <coastal State>.

## **ARTICLE 11: TRANSPARENCY AND CONFIDENTIALITY**

- 11.1 This agreement shall be published by <coastal State> in a form accessible to the public.
- 11.2 All information, data and statistics received by the Government of <coastal State> pursuant to this Agreement shall become the property of the Government. However, the Government undertakes that all such information, data and statistics, except for aggregate statistics on fishing capacity and catch by fishery of vessels authorized to fish pursuant to this Agreement, will remain confidential to the Parties to this Agreement and shall not be disclosed to any third party without the prior consent in writing of the <fishing nation>.
- 11.3 The Government of <coastal State> reserves the right to publish aggregate data on fishing capacity and catch by fishery pursuant to this Agreement.

## ARTICLE 12: BROADER COOPERATION

The Parties to this Agreement shall cooperate with a view to the development and enhancement of fisheries in <coastal State> and in particular shall cooperate to promote:

- (a) greater involvement of <coastal State> nationals in tuna fisheries;
- (b) the improvement of existing fishing port facilities;
- (c) the development of joint venture fishing operations;
- (d) the training of <coastal State> nationals as <tuna fishing vessel deckhands>.

## ARTICLE 13: CONSULTATIONS AND DISPUTE SETTLEMENT

13.1 The Government and the Association agree to hold consultations within thirty (30) days of the receipt of a notice from the requesting Party. Such consultations may involve, *inter alia*, consideration of the following matters:

- (a) the implementation or interpretation of the terms of this Agreement;
- (b) the development of further cooperation in the field of fisheries of mutual interest to the Parties; and
- (c) such other matters as may be agreed upon.

13.2 In the event of any dispute arising out of the interpretation or application of any of the provisions of this Agreement, the Parties shall endeavour to settle such dispute through peaceful consultations.

13.3 In the event that it is not possible to settle a dispute by consultations between the Parties the dispute shall be referred to arbitration in accordance with the laws of <coastal State>.

## ARTICLE 14: REVIEW

This Agreement may be reviewed or amended at any time by mutual agreement between the Parties.

## ARTICLE 15: ENTRY INTO FORCE

- 15.1 This Agreement shall enter into force on the date of signature and continue in force for a period of twelve (12) months thereafter.
- 15.2 Notwithstanding paragraph 15.1, this Agreement may be extended for further periods of twelve (12) months provided that:
- (a) the Government is satisfied with the level of compliance by the Association and Association vessels with the terms and conditions of this Agreement; and
  - (b) the Parties are able to agree on the terms and conditions of an extended Agreement and in particular the amount of fees payable and number of licences to be issued under an extended Agreement.

## ARTICLE 16: TERMINATION

Either party may terminate this Agreement by serving one (1) month's notice of its intention to terminate the Agreement on the other party. In the event of termination by either party for whatever reason there shall be no refund of fees paid or payable under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective Parties, have signed this Agreement

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_

## **APPENDICES**

Appendix A	Registration Application Form
Appendix B	Registration Certificate
Appendix C	Application for Fishing Permit
Appendix D	Fishing Permit
Appendix E	Fee Calculation Formula
Appendix F	Reporting Formats
Appendix G	Daily Logsheet
Appendix H	Transshipment Report





# MODEL AGREEMENT NUMBER THREE

## Access Agreement Between the Government of ‹Coastal State‹ and ‹Fishing Company Ltd.‹ Concerning Fishing Activities in the Exclusive Economic Zone of ‹Coastal State‹

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**MODEL AGREEMENT ACCESS BETWEEN THE  
GOVERNMENT OF <COASTAL STATE> AND  
<FISHING COMPANY LTD.> CONCERNING FISHING  
ACTIVITIES IN THE EXCLUSIVE ECONOMIC ZONE  
OF <COASTAL STATE>**

Whereas <Fishing Company Ltd.>, a company incorporated under the laws of <fishing nation> wishes to establish a fishing enterprise in <coastal State> and, for this purpose, wishes to obtain licences to operate locally-based foreign fishing vessels in the exclusive economic zone of <coastal State>.

The Government of <coastal State> (hereinafter referred to as “the Government”) of the one part and <Fishing Company Ltd.> (hereinafter referred to as “the Company”) of the other part have agreed the following terms and conditions covering fishing activities by fishing vessels operated by the Company (hereinafter referred to as “Company vessels”), which vessels are more particularly described in the Schedule to this Agreement, within the exclusive economic zone of <coastal State> (hereinafter referred to as “the EEZ”).

## **ARTICLE 1: JURISDICTION AND DEFINITIONS**

- 1.1 The Company recognises and accepts the sovereign jurisdiction of <coastal State> over the marine living resources within the EEZ in accordance with <national legislation> and international law.
- 1.2 Save as hereinafter provided the Company, its servants and agents shall comply with all relevant provisions of the <national fisheries law>, any regulations made thereunder and the terms and conditions of this Agreement. The Government shall supply the Company with a copy of the <national fisheries law> and all relevant regulations made thereunder.
- 1.3 Except as hereinafter provided all definitions of terms and phrases set forth in the <national fisheries law> (hereinafter referred to as “the Act”) shall apply to this Agreement.
- 1.4 For the purposes of this Agreement:
  - (a) “Director” means the Director of Fisheries;
  - (b) “fishing” means:
    - (i) searching for, catching, taking or harvesting fish;
    - (ii) attempting to search for, catch, take or harvest fish;
    - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
    - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
    - (v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transshipment;
    - (vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel.
  - (c) “fishing vessel” means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations;
  - (d) “fishing trip” means any period commencing with the departure of the vessel from port for the purposes of beginning a fishing trip to such time as any or all of the fish on board the vessel are unloaded from the vessel, either ashore or onto another vessel;

- (e) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master; and
- (f) “transhipment” means the unloading of all or any of the fish on board a vessel to another vessel either at sea or in port.

This Agreement includes the Schedule and Appendices to this Agreement which shall be an integral part hereof.

## **ARTICLE 2: SCOPE AND DURATION OF AGREEMENT**

- 2.1. Subject to the other terms and conditions set forth in this Agreement, up to <insert number> Company vessels may be issued with locally-based foreign fishing licences authorizing them to engage in fishing operations within the EEZ for a period of twelve (12) months from the date of approval of this Agreement by Cabinet. This Agreement shall permit fishing for tuna and tuna-like species (including billfish and other incidental bycatch) in the EEZ by Company vessels using the long-line method of fishing only. No fishing activities will be permitted in the internal waters and territorial sea of <coastal State>.
- 2.2 This Agreement shall not take effect until such time as:
  - (a) the Company has supplied a statement setting out full details of <any proposed joint venture arrangement>, including details of any contractual or charter arrangements entered into by the Company relating to the Company vessels;
  - (b) the Company has supplied and the Minister for <Fisheries> <Marine Resources> has approved a business plan, showing full details of the proposed fishing, export and marketing operations of the Company, including projected costs and financial statements; and
  - (c) this Agreement has been approved by Cabinet.

## **ARTICLE 3: RESPONSIBILITIES OF THE COMPANY**

- 3.1 The Company shall ensure that Company vessels do not fish in the EEZ without first obtaining locally-based foreign fishing licences in accordance with this Agreement.

- 3.2 The Company shall ensure that Company vessels comply with all applicable laws and regulations of <coastal State>, including the provisions of this Agreement.
- 3.3 In the event that a judgement or other determination has been duly entered against a Company vessel, its crew or officers by the courts of <coastal State> for any violations of applicable laws or regulations, the Company shall be liable for prompt satisfaction of such judgement or determination.
- 3.4 The Company shall, at the request of the Government, take all reasonable measures to assist in the investigation of an alleged breach of any applicable laws and regulations of <coastal State> including an alleged breach of any provision of this Agreement by a Company vessel, its crew or officers and shall promptly communicate all the requested information to the Government.
- 3.5 The Company shall appoint and maintain for the duration of this Agreement an agent who is resident in <coastal State> and is authorized to act on behalf of the owner, master or charterer of each Company vessel licensed under this Agreement and who is able to accept legal responsibility on behalf of the owner, master or charterer for any action, juridical or otherwise, taken in respect of that vessel. The name and address of such agent shall be notified to the <Director> and any communication, information, document, direction, request or response to or from that agent shall be deemed to have been sent to or received from the owner, master or charterer of the Company vessel concerned, as the case may be.
- 3.6 The Company shall take necessary steps to ensure that each Company vessel licensed to fish pursuant to this Agreement is appropriately and adequately insured against all risks and liabilities including, but not limited to, collision, protection and indemnity, and oil pollution liability insurance.

#### **ARTICLE 4: FEES**

- 4.1 Immediately upon approval of this Agreement by the Cabinet, and in consideration of the issue by the Government of locally-based foreign fishing licences in accordance with this Agreement, the Company shall pay to the Government a fee of currency in respect of each licensed Company vessel for the period of this agreement.

- 4.2 The fee referred to in paragraph 4.1 shall be non-refundable, regardless of the cancellation of any permit or permits during the licensing period.
- 4.3 All fees payable by the Company to the Government under this Agreement shall be paid free and clear of any deductions or withholdings.

## **ARTICLE 5: ISSUE OF FISHING LICENCES**

- 5.1 Subject to the other provisions of this Agreement, the Government may issue locally-based foreign fishing licences to the Company vessels specified in the Schedule hereto to allow Company vessels to fish in the EEZ.
- 5.2 In respect of each Company vessel, the Company shall cause to be completed a separate application for a licence to fish in the EEZ in the form attached hereto as Appendix A.
- 5.3 The completed licence application forms and additional information described in this Article shall be forwarded to the Director by post, hand or facsimile.
- 5.4 On granting a licence to a Company vessel, the Minister will promptly issue a locally- based foreign fishing licence in respect of each such vessel in the form set out in Appendix B. Every licence issued under this Agreement shall be maintained in good condition and prominently displayed on the Company vessel in respect of which it is issued in a place where it can be readily inspected by a fisheries officer and is safe from the elements.

## **ARTICLE 6: REPORTING CONDITIONS**

- 6.1 The operator of every Company vessel issued with a licence to fish under this Agreement shall provide to the Director information relating to the position of, and catch on board, the vessel by telex or cable in the form prescribed in Appendix C at the following times:
  - (a) at least 24 hours prior to entry into the EEZ;
  - (b) daily while within the EEZ;
  - (c) at least 24 hours prior to the estimated time of entry into port in <coastal State>; and
  - (d) upon departure from the EEZ.

- 6.2 Within 24 hours of completion of each fishing trip a trip completion report shall be transmitted to the Director in the form prescribed in Appendix C.
- 6.3 The operator of every Company vessel licensed to fish under this Agreement shall duly complete in the English language a daily report in the form prescribed in Appendix D of all catch in the EEZ and (where in the course of a fishing trip the vessel fishes on the high seas and in the EEZ) on the high seas and shall certify that the information contained in such reports is true, complete and accurate.
- 6.4 The catch report form referred to in paragraph 6.3 shall be forwarded to the Director within 45 days of the completion of each fishing trip.
- 6.5 Every Company vessel issued with a locally-based foreign fishing licence pursuant to this Agreement shall maintain on board current fishing logs which can be easily understood by observers of the Government. Such logs shall contain, in English, a record of every instruction, direction or requirement communicated to the master by <coastal State> authorities while the vessel is in the EEZ as well as the following information relating to the activities of the vessel during the day:
  - (a) the fishing effort of the vessel;
  - (b) the method of fishing used;
  - (c) the areas in which fishing was undertaken;
  - (d) the quantity of each species of fish taken; and
  - (e) such other information as the Director may from time to time require.

## **ARTICLE 7: OBSERVERS**

- 7.1 Upon request by the Government duly authorised observers shall be placed on board Company vessels in respect of which licences to fish have been issued under this Agreement.
- 7.2 The operators of Company vessels shall provide the observer, while on board the vessels, at no expense to the Government, with food, accommodation and medical facilities of such reasonable standard equivalent to that provided for the officers of the vessels. The operators shall pay the full costs of the observers, including salary and full insurance coverage.

- 7.3 The operator and each member of the crew of a Company vessel in respect of which a licence to fish has been issued under this Agreement shall allow and assist observers pursuant to paragraph 1 of this Article to:
- (a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Government to the Company;
  - (b) have full access to and the use of facilities and equipment on board the vessels which the observer may determine is necessary to carry out his or her duties provided that the observer shall neither interfere with the lawful operation of the vessel nor violate relevant laws and regulations of <fishing nation>;
  - (c) have full access to the bridge, fish on board and areas which may be used to hold, process, weigh or store fish;
  - (d) have full access to the vessel's records including its log-books and other documentation for the purpose of inspection or copying; and
  - (e) gather any other information relating to fisheries in the EEZ or on the high seas without unduly interfering with the lawful operation of the vessels.
- 7.4 No operator or crew member of a Company vessel shall assault, obstruct, resist, deny, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.
- 7.5 The Company shall be held responsible for any casualty or personal injury to any observer resulting from the vessel operator's or crew member's negligence; provided, however, that liability of the vessel, her master or her owner under traditional principles of maritime law shall not be affected or diminished.
- 7.6 The Company will not be held responsible for any casualty or personal injury to observers resulting from the observer's own negligence or force majeure.

## ARTICLE 8: ENFORCEMENT

- 8.1 The master and each member of the crew of a Company vessel shall immediately comply with every instruction and direction given by an authorized and identified Fisheries Officer or Police Officer, including to stop, to move to a specified location, and to facilitate safe boarding and

inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorised Fisheries Officer or Police Officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorised Fisheries Officer or Police Officer in the performance of his or her duties.

- 8.2 Company vessels licensed to fish under this Agreement shall comply with the 1989 FAO standard specifications for the marking and identification of fishing vessels. In particular the international radio call sign of the vessel, or, if the vessel does not have a radio call sign, its signal letter shall be painted in white on a black background, or in black on a white background on the port and starboard sides of the vessel's hull or superstructure in block letters not less than one (1) metre in height in such a manner that the markings are clearly visible from the air and at sea level.
- 8.3 At all times while the vessel is in the EEZ all parts of these marking shall be clear, distinct and uncovered.

## **ARTICLE 9: TRANSHIPMENT**

- 9.1 Except as permitted by paragraph 9.3, no Company vessel shall land at any port or place in <coastal State> without the express permission of the Director.
- 9.2 Company vessels licensed under this Agreement shall not tranship at sea under any circumstances.
- 9.3 Offloading of catch may take place only at the port(s) of < >.
- 9.4 The Company shall provide to the Director information relating to the catch transhipped in such form as may be prescribed by the Director. Such information shall include details of the catch transhipped by weight by species, rejected catch, cargo manifest and packing list for onward shipment and final destination of the catch transhipped.
- 9.5 Company vessels permitted to offload catch in <coastal State> shall purchase all of their provisions, including water, electrical power and fuel from sources in <coastal State> as far as such are available in reliable quantities and quality and at competitive prices. At the request of the Director,

Company vessels permitted to tranship catch in <coastal State> shall make available, at the prevailing domestic market price, a portion of the catch on board for domestic consumption in <coastal State>.

## **ARTICLE 10: RESTRICTIONS ON FISHING OPERATIONS**

- 10.1 The Company shall ensure that no Company vessel or person on board a Company vessel takes, kills or molests any marine mammal, turtle or sea-bird during any fishing trip during which the Company vessel enters the EEZ.
- 10.2 In order to protect local and artisanal fishing operations, the Government may from time to time, after consultation with the Company, close certain areas in the EEZ to certain types of fishing operations. Where such closed areas have been established pursuant to this paragraph, the Company shall notify the Government at least 24 hours prior to the entry of a Company vessel into or departure of a Company vessel from a closed area.
- 10.3 Notwithstanding anything herein contained, fishing is prohibited within a radius of one and a half (1½) miles of any fish aggregating device deployed within the EEZ. The Government shall notify the Company of the location of any such devices and the Company shall ensure that the operators of Company vessels are kept fully informed of the location of such devices.
- 10.4 Taking into account the dependence of the people of <coastal State> on the marine living resources found in the EEZ for their food and livelihood, the Company shall ensure that Company vessels adopt all reasonable measures to minimize catches of non-target species, including the use of equipment and techniques shown to be effective in minimizing catches of non-target species. The Company shall ensure that the operators of all Company vessels authorized to fish pursuant to this Agreement report full details of all catches of non-target species, including non-fish species.

## **ARTICLE 11: CONFIDENTIALITY**

All information, data and statistics received by the Government pursuant to this Agreement shall become the property of the Government. However, the Government undertakes that all such information, data and statistics will remain confidential to the Parties to this Agreement and shall not be disclosed to any third party without the prior consent in writing of the Company. Provided that, after the expiration of twelve (12) months from the date of expiry of this Agreement, the Government may use data received pursuant to this Agreement for the purpose of scientific publications.

## **ARTICLE 12: CONSULTATIONS AND DISPUTE SETTLEMENT**

- 12.1 The Government and the Companies shall hold consultations relating to the implementation of this Agreement within two (2) weeks of a request by either Party.
- 12.2 In the event of any dispute arising out of the interpretation or application of any of the provisions of this Agreement, the Parties shall endeavour to settle such dispute through peaceful consultations.
- 12.3 In the event that it is not possible to settle a dispute by consultations between the Parties the dispute shall be referred to arbitration in accordance with the laws of <coastal State>.

## **ARTICLE 13: REVIEW**

- 13.1 This Agreement may be reviewed or amended at any time by mutual agreement between the Parties.
- 13.2 The Company shall inform the Government immediately of any change in the details provided to the Government pursuant to Article 2.2 including, in particular, any change in the financial relationship or the corporate structure of any joint venture involving the Company and any change in the contractual or other relationship between the Company and the owners of the Company vessels.
- 13.3 In the event of a material change in circumstances the Government reserves the right to cancel or suspend the licences issued pursuant to this Agreement. The Government may require additional information from

the Company and may require the deposit of a financial guarantee or other form of security for the continued operation of the Company vessels.

## **ARTICLE 14: ENTRY INTO FORCE AND EXTENSION**

- 14.1 This Agreement shall enter into force on the date it is approved by Cabinet and shall remain in force for a period of twelve (12) months thereafter.
- 14.2 Notwithstanding paragraph 14.1, this Agreement may be extended for further periods of twelve (12) months provided that:
- (a) the Government is satisfied with the level of compliance by the Company and Company vessels with the terms and conditions of this Agreement; and
  - (b) the Parties are able to agree on the terms and conditions of an extended Agreement and in particular the amount of fees payable and number of licences to be issued under an extended Agreement.

## **ARTICLE 15: Termination**

Either party may terminate this Agreement by serving one (1) month's notice of its intention to terminate the Agreement on the other party. In the event of termination by either party for whatever reason there shall be no refund of fees paid or payable under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective Parties, have signed this Agreement  
in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_

## **SCHEDULE**

[Names of vessels]



## APPENDICES

Appendix A Application for Licence

Appendix B Fishing Licence

Appendix C Reporting Formats

(a) Zone Entry and Exit

- (1) report type (ZENT for entry and ZEXT for exit)
- (2) trip begin date
- (3) date and time (GMT)
- (4) international call sign
- (5) position (to one minute of arc)
- (6) catch on board by weight by species
- (7) intended action

as: ZENT (or ZEXT) / TBD / ddmmyy / TIME / CALL  
SIGN / LA 1111 LO 1111 / CATCH / INTENDED  
ACTION

(b) Daily Reports

- (1) report type (DAY)
- (2) trip begin date
- (3) date and time (GMT)
- (4) international call sign
- (5) position (to one minute of arc)
- (6) catch on board by weight by species
- (7) intended action

as: WEEK / TBD / ddmmyy / TIME / CALL SIGN /  
LA 1111 / LO 1111 / CATCH / INTENDED ACTION

(c) Port Entry Reports

- (1) report type (PENT)
- (2) trip begin date
- (3) date and time (GMT)
- (4) international call sign
- (5) position (to one minute of arc)
- (6) catch on board by weight by species
- (7) estimated time of entry into port (GMT)
- (8) port name
- (9) intended action

as: PENT / TBD / ddmmyy / TIME / CALL SIGN /  
LA 1111 / LO 1111 / CATCH / ETA / PORT NAME /  
INTENDED ACTION

(d) Trip Completion Report

(1) report type (COMP)

(2) trip begin date

(3) date and time (GMT)

(4) international call sign

(5) port of unloading

(6) catch unloaded by weight by species

as: COMP / TBD / ddmmyy / TIME / CALL SIGN /  
PORT / CATCH

Appendix D Logsheets





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# BIBLIOGRAPHY AND ADDITIONAL SOURCES OF INFORMATION

## Bibliography

### **Fisheries Best Management Practices (ex.'s: Iceland, Namibia, New Zealand)**

Arnasson. R. 1994. *The Icelandic Fisheries, Evolution and Management of a Fishing Industry*. Fishing News Books.

Arnasson. R. 1996. "On the ITQ Fishery Management System in Iceland." *Fish Biology and Fisheries* 6: 63-90.

Hartevelt, T. 1998. *Fishing for the Future: Review of the Fisheries Act 1996*. Report of the Independent Reviewer of the Fisheries Act 1996 to the Minister of Food, Fibre, Biosecurity and Border Control. Wellington.

Manning, P. 1995. *Managing Namibia's Fisheries as a Vehicle for Development: A Common Pool Resource or Candidate for Tradable Pool Rights?* Presented at "Reinventing the Commons", 5<sup>th</sup> Annual Conference of the International Association for the Study of Common Property. Bodoe, Norway.  
<http://www.indiana.edu/~iascp/abstracts/357.html>

Namibia Foundation. 1994. *Focus on Fisheries and Research*. Namibia Brief 18, 118 p.

Namibia Ministry of Fisheries and Marine Resources. 1992. *White Paper: Towards Responsible Development of the Fisheries Sector*. Winhoek.  
[http://www.mfmr.gov.na/policy/white\\_paper.htm](http://www.mfmr.gov.na/policy/white_paper.htm)

Namibia Ministry of Fisheries and Marine Resources. 1993. *Policy Statement on the Granting of Rights of Exploitation to Utilize Marine Resources and on the Allocation of Fishing Quotas*. Winhoek, 8 p.

[http://www.mfmr.gov.na/policy/Policy\\_Granteeing\\_Rights.pdf](http://www.mfmr.gov.na/policy/Policy_Granteeing_Rights.pdf).

Wallace, C. 1995. *Managing Resources in New Zealand*. Victoria University, Wellington.

Wyatt, N. 2000. *Cost Recovery and Fisheries Management in New Zealand*. Presented at the Oregon State University International Institute of Fisheries Economics and Trade Conference on Microbehavior and Macroresults.

*Fisheries Agreements (General, EU, South Pacific)*

Acheampong, Anthony. 1997. *Coherence Between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa*. ECDPM Working Paper No. 52.

[http://www.oneworld.org/ecdpm/pubs/wp52\\_gb.htm](http://www.oneworld.org/ecdpm/pubs/wp52_gb.htm).

Aelvoet, M. & M. Earle. 1996. *Current Fisheries Agreement between the European Union and the Member States of the Lome Convention*. Paper submitted to the ACP-EU Follow-Up Group on fishing., European Parliament, 22. Luxembourg 8 p.

Australian Environment Department. 1999. *Australia's Ocean Policy: International Agreements*. Background Paper No. 2.

<http://www.environment.gov.au/marine/ocepoly/bgpaper2/chap12.html>

Bergin, A. 1994. "Political and legal control over marine living resources – recent developments in South Pacific distant water fishing." *The International Journal of Marine and Coastal Law* 9: 289 - 309.

Bergin, A. 1994. "The Last Jewel in a Disintegrating Crown: the case of Japanese Tuna Fisheries." *Ocean Development and International Law* 25: 187-215.

Bergin, A. 1995. "Japan's Distant Water Tuna Fishery: Constraints and Transition." *Current Politics and Economics of Japan* 4: 73-90.

Bergin, A. 1995. "Australia's Approach to High Seas Fishing." *International Journal of Marine and Coastal Law* 10: 349-367.

Bilger, C. C. 1986. "U.S.-Soviet Fishing Agreement Treaty Authorizing Soviet Fishing in U.S. Waters." *Marine Policy* 10: 51-56.

Bostwick, L. 1995. "Empowering South Pacific Fishmongers: A New Framework for Preferential Access Agreements in the South Pacific Tuna Industry." *Law and Policy in International Business* 22.

Bours, H. & M. Earle. 1998. "Multilateral Agreement on Investment: the Effects on Fishing in India." *Samudra* 20. <http://www.amrc.org.hk/Arch/3207.htm>.

Catanza et al. 2000. *Evaluation of Fishing Agreements Concluded by the European Community*. Presented at the Oregon State University International Institute of Fisheries Economics and Trade Conference on Microbehavior and Macroresults.

- Coalition for Fair Fisheries Agreements/European Research Office. 1995. *Ensuring Coherence between EU Fisheries Agreements and Development Policy*. Brussels, 8 p.
- Coalition for Fair Fisheries Agreements/Credetip. 1995. *Fishing for a Future. Artisanal Fishing in Senegal and EU Fisheries Agreements*. Brussels, 30 p.
- Coalition for Fair Fisheries Agreements/European Research Office. 1995. *An Introduction to Fisheries Agreements*. Brussels, 8 p.
- Coalition for Fair Fisheries Agreements/European Research Office. 1997. "Second Generation" *Fisheries Agreements: Issues Arising*. Brussels, 25 p.
- Cook, B. A. 1994. "International Cooperative Agreements – Scotia-Fundy Herring Fisheries." *Marine Policy*: 275 – 283.
- Crampton, Peter. 1997. *Report on International Fisheries Agreements*. European Parliament Committee on Fisheries.
- de Fontaubert, A. Charlotte. 1998. *European Union Fisheries and Policy: Changing the way the EU negotiates Third-Party Agreements*. IUCN, Washington.
- de Vries, H. 1995. *The Fight for Fish: Towards Fairer Fish Agreements*. EUROSTEP. Brussels.  
<http://www.oneworld.org/eurostep/fishppa2.htm#2>.
- Dekker, A. 1991. "Taiwanese Fishing Ceases off Northern Australia." *Australian Fisheries* 50: 26-27.
- Doulman, D. J. 1984. "PNG Tuna Industry Re-Established through Agreement with Japan." *Australian Fisheries*.
- Doulman, D. J. 1986. "The Tuna Industry in the Pacific Islands Region: Opportunities for Foreign Investment." *Marine Fisheries Review* 48: 15-22.
- Doulman, D. J. 1989. "Japanese distant-water fishing in the South Pacific." *Pacific Economic Bulletin* 4: 22-28.
- Doulman, D. J. and P. Terawasi. 1990. "The South-Pacific Regional Register of Foreign Fishing Vessels." *Marine Policy* 14: 324-332.
- Doulman, David J. 1991. "Fisheries Management in the South Pacific: The Role of the Forum Fisheries Agency." In Thakur, R. (ed). *The South Pacific: Problems, Issues and Prospects*. Macmillan. London. pp. 81-94.
- Ensrud, M. K. 1990. "Foreign Fishing in the South-Western Indian Ocean: Case Studies of Mozambique and Seychelles." *International Challenges* 10: 54-62.

- European Institute for Research on Mediterranean and Euro-Arab Cooperation (MEDEA). 2000. *EU-Morocco Fishing Agreement*. Commentary. <http://www.medeabe/en/index298.htm>.
- European Parliament. 1994. *Small-scale fisheries in developing countries associated with the European Union*. DG for Research, working papers, Agriculture, Fisheries and Forestry Series. W-14, volume 1. Luxembourg.
- European Parliament. 1996. *Les Accords bilatéraux et les Conventions internationales de pêche*. Fisheries Series No. E5. <http://www.europarl.eu.int/dg4/wkdocs/catalog/en/catfish.htm>.
- European Parliament. 1997. *International Fisheries Agreements*. European Parliament Factsheet. [http://www.europarl.eu.int/dg4/factsheets/en/4\\_2\\_4.htm](http://www.europarl.eu.int/dg4/factsheets/en/4_2_4.htm).
- European Parliament. 1999. *La coopération entre l'UE et les Pays ACP dans le secteur de la Pêche au delà de l'an 2000*. Fisheries Series No. 106. <http://www.europarl.eu.int/dg4/wkdocs/catalog/en/catfish.htm>.
- European Parliament. 1999. *International Fisheries Relations*. European Parliament Fact Sheets, No. 4.2.4. [http://www.europarl.eu.int/dg4/factsheets/en/4\\_2\\_4.htm#UP](http://www.europarl.eu.int/dg4/factsheets/en/4_2_4.htm#UP).
- European Parliament Policy Paper. "How Blue Will My Europe Be?" .
- Forum Fisheries Agency, 1995. *Record of Discussion*. meeting of Pacific island countries and the Taiwan Deep Sea Tuna Boatowners and Exporters Association to discuss a regional licensing agreement for longline vessels in Brisbane. Forum Fisheries Agency, Honiara.
- French Institute for the Exploitation of the Sea (IFREMER). 1999. *Evaluation of Fishing Agreements Concluded by the European Community*.
- German Development Institute, Hartmut Brandt. 1995. *Prospects for Development Cooperation in the Fishing Industry*. Berlin.
- Grynberg, R. 1997. *Handicapped Infants and Delinquent Parents: Lome Convention Rules of Origin and the Solomon Islands Tuna Industry*. ECDPM Working Paper No. 37.
- Johnstone, Nick. 1996. *The Economics of Fisheries Access Agreements: Perspectives on the EU-Senegal Case*. International Economics Programme, DP 96-12.
- Kaczynski, V. M. 1989. "Foreign Fishing Fleets in the Sub-Saharan West-African EEZ – The Coastal State Perspective." *Marine Policy* 13: 2-15.
- Kaczynski, W. 1979. "Alternatives Facing Distant-Water Fishing States in the Northeast Pacific Ocean." *Ocean Development and International Law* 6: 73-101.
- Kelleher, M. 1999. *Assessing the Impact of Foreign Fishing Agreements in Africa*. FAO. Rome.

- Mair, J. 1993. "EC Plans Fishing Access Deal with Russia – Keep Russians Out! – Pelagic Industry Fears Threat to Klondyker Outlets." *Fishing News* 23: 1-2.
- Matsuda, Y. 1990. *Changes in Tuna Fisheries Negotiations between Japan and the Pacific Island Nations*. In Report of the First Conference of the Pacific Region and International Law, Fukoka Convention Bureau, p. 150-80.
- Pinho, A. T. 1998. *The Use of Bonding as a Means of Guaranteeing Observance by Foreign Fishing Vessels of Coastal State Conditions of Access: The Experience of West Africa*. Forum Fisheries Agency.
- Porter, Gareth. Fisheries Subsidies, Overfishing, and Trade. UNEP. Geneva.
- Porter, Gareth. 1997. *Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters*. Subsidies and Depletion of World Fisheries. World Wildlife Fund. Washington, D.C.
- Potter, B. 1996. *Improving Regimes to Manage Natural Resources: Lessons from an Example of the United States-Republic of Korea Pollock Negotiations*. Policy Paper 29. University of California, Institute for Global Conflict and Cooperation.
- Robb, D. H. 1984. *Foreign Fishing Access Regimes in the Pacific Basin: The Emerging Marine Economy of the Pacific*. Butterworth.
- Rogers, A. 1994. "Argentina Ratifies \$190 Million Agreement." *Fishing News International* 33: 2-3.
- Sabr El Djamil Abada. 1996. *ACP-EU Fishing Agreements: Accord or Discord? 'Keep to the Spirit' Appeal by Joint Fisheries Committee*. The Courier ACP-EU, No. 156: 10-11. [http://www.oneworld.org/euforic/courier/156\\_aba.htm](http://www.oneworld.org/euforic/courier/156_aba.htm).
- Simpson, S. 1998. *Fish Stocks "Threatened" by Japan's Bilateral Agreements*. Cyber-Times. Hong-Kong. <http://www.cyber-times.org/environment/e160698.htm>.
- Sen, S. 1989. *EC Fisheries Agreements with ACP States and Their Likely Impacts on Artisanal Fisheries*. Intermediate Technology Group. Rugby, UK.
- Stokes, R. L. 1981. "U.S.-Foreign Cooperation for Fisheries Development – A Preliminary Economic Analysis." *Marine Policy* 4: 326-328.
- Teiwaki, R. 1987. "Access Agreements in the South-Pacific – Kiribati and Distant Water Fishing Nations 1979 – 1986." *Marine Policy* 11: 273-284.
- Tsamenyi, B., and Mfodwo, K., 1995. "South Pacific island states and the new regime of fisheries: issues of law, economy and diplomacy." *The law of the sea in the Asian Pacific Region*, eds. J. Crawford and D. Rothwell, Martinus Nijhoff, Dordrecht, p. 121-153.
- World Wide Fund. 1996. *Costs and Benefits of the EU/Third Country Fishery Agreements*. Surrey, 6 p.

## International Fisheries Law & General Information

- Anderson, L. G. 1977. *Economic Impact of Extended Fisheries Jurisdiction*. Ann Arbor, MI.
- Armstrong, C. W. 1994. "Cooperative Solutions in a Transboundary Fishery: the Russian-Norwegian Co-Management of the Arcto-Norwegian Cod Stock." *Marine Resource Economics* 9: 329-351.
- Balton, D. A. 1996. "Strengthening the Law of the Sea: the New Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks." *Ocean Development and International Law* 27: 125-151.
- Boer, B., 1995. "Environmental law and the South Pacific: Law of the Sea issues." in *The law of the Sea in the Asian Pacific Region*, eds. J. Crawford and D. Rothwell, Martinus Nijhoff, Dordrecht, pp. 67-92.
- Christy, L. C. 1986. *Forms of Foreign Participation in Fisheries*. Coastal-State Policy. FAO, Fisheries Law Advisory Program.
- Clark, F. H. and G. R. Munro. 1987. "Coastal States, Distant Water. Fishing Nations and Extended Jurisdiction: A Principal-Agent Analysis." *Natural Resources Modeling* 2: 81 – 107.
- Clark, F. H. and G. R. Munro. 1991. "Coastal State and Distant Water Fishing Nations' Conflicting Views of the Future." *Natural Resources Modeling* 5: 345 – 370.
- Copes, P. 1981. "The Impact of UNCLOS III on Management of the World's Fisheries." *Marine Policy* 5: 217 – 228.
- David J. 1990. "Fisheries Management and Cooperation in the South Pacific Region." In Ghai, Y. (ed). *Public Administration and Management in Small States*. University of the South Pacific. Suva. pp. 209-226.
- Doulman, H. R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges, and Prospects*. University of the South Pacific. Suva, 446 p.
- Food and Agriculture Organization. 1993. *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*. Rome.  
<http://www.fao.org/WAICENT/FAOINFO/FISHERY/agreem/complian/complian.asp>.
- Food and Agriculture Organization. 1995. *Report of the Expert Consultation on Guidelines for Responsible Fisheries Management*. Wellington, New Zealand.  
<http://www.fao.org/fi/agreem/agreem.asp>.
- Food and Agriculture Organization. 1995. *Code of Conduct*. Rome.  
<http://www.fao.org/fi/agreem/codecond/ficonde.asp>.
- Food and Agriculture Organization. 1997. *Fisheries and Aquaculture in the South Pacific: Situation and Outlook in 1996*. FAO Fisheries Circular No. 907 FIP/C907. Rome.  
<http://www.fao.org>.

- Food and Agriculture Organization. 1999. *Report of the Meeting of FAO and Non-FAO Regional Fishery Bodies or Arrangements*. FAO Fisheries Report. No.597. Rome, FAO.  
<http://www.fao.org/fi/meetings/rfb/r597e.asp>.
- Hunt, C. 1996. *Cooperative Approaches to Marine Resource Management in the Pacific*. Customary Marine Tenure Seminar. DP 2. South Pacific Information Network.  
<http://sunsite.anu.edu.au/spin/SEMINARS/CUSTOM/huntc961.htm#INDEXS>
- Indian Ocean Commission (IOC). 1998. *The Future of the Indian Ocean Commission: Strategic Reflections on Regional Cooperation in the Next Ten Years*. (White Paper). Maastricht: European Centre for Development Policy Management/Indian Ocean Commission.
- Lodge, Michael. 1992. "Minimum Terms and Conditions of Access." *Marine Policy* 16: 227-304.
- Miles, Edward L., and William T. Burke. 1989. "Pressures on the United Nations Convention on the Law of the Sea of 1982 arising from new fisheries conflicts: the problem of straddling stocks." *Ocean Development and International Law* 20: 343-357.
- Moore, G. 1986. *Regional Co-Operation in Controls over Foreign Fishing Operations*. Paper presented at the CIDA/FFA 2<sup>nd</sup> Regional Fisheries Legal Consultation. Goroka, Papua New Guinea.
- Munro, G. R. 1989. "Coastal States and Distant Water Fishing Nation Relations: An Economist's Perspective." *Marine Fisheries Review* 5: 3-10.
- Munro, G. R. 1990. "Extended Jurisdiction and the Management of Pacific Highly Migratory Species." *Ocean Development and International Law* 21: 289 – 307.
- Munro, G. R. 1994. "Coastal States and Distant Water Fleets under Extended Jurisdiction: The Search for Optimal Incentive Schemes." in Basar, T. and Haurie, A. (eds.) *Advances in Dynamic Games and Applications*. Birkhauser, Boston: 301 – 317.
- Munro, G. R. 1998. *The Management of High Seas Fisheries and the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: a Review*. Unpublished paper prepared for Project on the Management of High Seas Fisheries. Bergen, Norway.
- Munro, G. R. 1998. *A Theoretical Framework for Examining Interactions between Subsidies, Overcapitalization, and Resource Exploitation: Short Term and Long Term Consequences*. Paper prepared for PECC Task Force on Fisheries Cooperation and Development Workshop, Manila, Philippines.
- Scharmman, L. 1991. "The UN Convention on the Law of the Sea and its Implications for Third World Countries: The Case of Tuna Fishery in South Pacific Countries." *Ocean & Shoreline Management* 15: 309-24.

Schowengerdt Jr., L. N. 1983. *Enforcement of Foreign Fishing Quota Allocations by the United States Coast Guard. Expert Consultation on the Regulation of Fishing Effort (Fishing Mortality)*. January 17 – 26.

United Nations. 1982. *Convention on the Law of the Sea Treaty*. New York.  
<http://www.un.org/Depts/los>

United Nations. 1992. *Agenda 21, Chapter 17: Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-Enclosed Seas, and Coastal Areas and the Protection, Rational Use, and Development of Their Living Resources*. New York.  
[gopher://gopher.un.org:70/00/conf/unced/English/a21\\_17.txt](http://gopher://gopher.un.org:70/00/conf/unced/English/a21_17.txt)

United Nations. 1992. *Agenda 21, Chapter 39: International Legal Instruments and Mechanisms*. New York.  
[gopher://gopher.un.org:70/00/conf/unced/English/a21\\_39.txt](http://gopher://gopher.un.org:70/00/conf/unced/English/a21_39.txt)

United Nations. 1992. *The Law of the Sea: The Regime for High Seas Fisheries, Status, and Prospects*. UN Division for Ocean Affairs and the Law of the Sea. Office of Legal Affairs, New York.

United Nations. 1995. *The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations General Assembly, New York  
[gopher://gopher.un.org/00/LOS/CONF164/164\\_37.TXT](http://gopher://gopher.un.org/00/LOS/CONF164/164_37.TXT)

UNESCO Courier. 1998. *Cooperation in Choppy Waters*. (1).

United States. 1999. *International Agreements Concerning Living Marine Resources of Interest to NOAA Fisheries*. International Fisheries Division, Office of Sustainable Fisheries, Silver Spring, MD. <http://www.nmfs.noaa.gov/oneagree.html>.

## Additional Sources of Information

### International Fisheries Laws & Agreements

1999 Agreement between Iceland, Norway and Russia Concerning Certain Aspects of Cooperation in the Area of Fisheries (and Protocols) [<http://www.oceanlaw.net>]  
- The basic purpose of the Agreement is a mutual exchange of quotas between the three Parties, combined with ceilings placed the total catch that may be taken of particular species and a number of other undertakings, such as a duty to attempt to prevent the reflagging of vessels in order to avoid the measures contained in the Agreement.

1996 Norwegian spring-spawning herring agreements [NEAFC Secretariat - <http://www.fiskistofa.is/dirfish/>] - To promote conservation, rational utilization and management of Norwegian spring spawning herring and to provide for long-term sustainable exploitation of the stock. To this end, the parties (Norway, Iceland, Faeroe Islands, and Russia) agreed to establish, taking into account the best scientific advice available, such measures as will ensure that the spawning

stock will be maintained above safe biological limits, where sufficient recruitment is ensured to allow for long-term sustainable exploitation.

- 1995 Agreement for the Implementation of the Law of the Sea Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks [UNDOC A/ Conf.164/38] - The United Nations Fish Stocks Agreement seeks to lay down a comprehensive regime for the conservation and management of and highly migratory fish stocks. The Agreement breaks down into four parts: general principles; measures for strengthening regional and sub-regional cooperation; measures for monitoring, surveillance and enforcement; and the settlement of disputes.
- 1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea [103D Congress, Senate Treaty Doc. 103-27, 6/16/1994, TIAS 11465] - The main objectives are: (1) to establish an international regime for conservation, management, and optimum utilization of resources in the Convention Area; (2) to restore and maintain the pollock resources in the Bering Sea at levels which permit their maximum sustainable yield; (3) to cooperate in the gathering and of factual information concerning pollock and other living marine resources in the Bering Sea; and to provide, if the Parties (China, Japan, Korea, Poland, Russia, United States) agree, a forum in which to consider the establishment of necessary conservation and management measures for living marine resources other than pollock in the Convention Area as may be required in the future.
- 1994 Federated States of Micronesia Arrangement for Regional Fisheries Access [South Pacific Forum Fisheries Agency, <http://www.ffa.int/>]- To cooperate to secure, for the mutual benefit of the Parties (Parties to the 1982 Nauru Agreement), the maximum economic benefits from the tuna resources of the Central and Western Pacific; to promote greater participation by nationals of the Parties in fisheries and assist in the development of national fisheries industries of the Parties; to establish a licensing regime under which fishing vessels of the Parties may gain access to the waters within the Arrangement Area on terms and conditions no less favorable than those granted by the Parties to foreign fishing vessels under bilateral and multilateral access arrangements; to allow access to the exclusive economic and fisheries zones of the Parties by purse seine fishing vessels on terms and conditions which are consistent with the provisions of the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery; and to further the objectives of the Nauru Agreement Concerning Cooperation in the Management of Fisheries Common Interest.
- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas [FAO Fisheries Department, <http://www.fao.org/fi/AGREEM/COMPLIAN/COMPLIAN.asp>] - The FAO Compliance Agreement was the first stage to be completed of the FAO's Code of Conduct for Responsible Fisheries. In broad terms, the Agreement places

a general obligation on flag States to take such measures as may be necessary to ensure that vessels flying their flags do not engage in any activity that undermines the effectiveness of international conservation and management measures and seeks to limit the freedom of vessels that have a bad compliance record to "shop around" for new flags.

- 1993 Convention for the Conservation of Southern Bluefin Tuna [ATS 1994 No.0016] - The objective of the Convention (Japan, New Zealand, and Australia participated) is to ensure, through appropriate management, the conservation and optimum utilization of southern bluefin tuna.
- 1993 Agreement for the Establishment of the Indian Ocean Tuna Commission [ATS 1996 No.0020, see also <http://www.seychelles.net/iotc/index.html>] - The Convention established the Indian Ocean Tuna Commission to promote in the conservation of tuna and tuna like species and to promote their optimum utilization, and the sustainable development of the fisheries.
- 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean [Title VIII of P.L. 102-567, see also <http://www.npafc.org>] - The general objective is to promote the conservation of anadromous stocks in the Convention Area. To this end, the Convention established a Commission with, alia, the following functions: (a) to recommend to the Parties (Canada, Japan, Russia, and United States) measures for the conservation of anadromous stocks in the Convention area, (b) to promote the exchange of information of any activities contrary to the provisions of the Convention; (c) to consider and make proposals to the Parties for the enactment of schedules of equivalent penalties for activities contrary to the provisions of the Convention; and (d) to review and evaluate enforcement actions taken by the Parties.
- 1992 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement [ATS 1993 No.0031] - To promote cooperation in the enforcement of the fisheries laws and regulations of Parties (member countries of the Forum Fisheries Agency) and in developing regionally agreed procedures for the conduct of fisheries surveillance and law enforcement.
- 1991 Western Indian Ocean Tuna Organization Convention [under Seychelles Fishing Authority, see also <http://www.oceanlaw.net>] - The Organization's objectives are: (a) harmonization of policies with respect to fisheries; (b) relations with distant water fishing nations; (c) fisheries surveillance and enforcement; (d) fisheries development; and (e) reciprocal access to EEZs of other members. The Organization does not have regulatory powers.
- 1991 Convention on Fisheries Cooperation Among African States Bordering the Atlantic Ocean [under Article XIV of FAO Constitution, <http://www.fao.org/legal/treaties/022T-E.HTM>] - The main objectives of the Convention are, inter alia: to promote cooperation in fisheries conservation, management and development in the region, including the monitoring,

- surveillance and control of fishing vessels; to “take up the challenge” of food self-sufficiency through the rational utilization of fishery resources; to stimulate the national economic sectors through the direct and secondary effects resulting from fishery resources exploitation, bearing in mind the importance of the fisheries sector in the economic, social and nutritional development process of the people of the region; to enhance, coordinate and harmonize efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources; and to reinforce solidarity with African land-locked States and geographically disadvantaged States of the region.
- 1989 Wellington Convention for the Prohibition of Fishing with Large Driftnets (and Protocols) [ATS 1992, No.0030] - The Convention prohibits driftnet fishing activities in the Convention area (the South Pacific).
- 1989 Agreement Creating the Eastern Pacific Tuna Fishing Organization [<http://www.oceanlaw.net>] - The main objectives are (i) to achieve the conservation, protection and optimum utilization of the highly migratory species regulated under the Agreement; (ii) to provide training, the transfer of technology assistance with development of fishing capacity and infrastructure of disadvantaged Latin American Eastern Pacific Coastal States who are Parties to the Agreement (Ecuador, El Salvador, Mexico, Nicaragua, Peru).
- 1987 Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America [16 U.S.C 973-973r] - To maximize benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties; and, in particular, to regulate the fisheries of United States’ vessels within and beyond the national jurisdiction of Pacific Island State parties.
- 1985 Pacific Salmon Treaty (inc. MOU and 1999 Agreement) [16 U.S.C 3631] - The main objectives of the Treaty are the conservation and rational management of Pacific salmon stocks and the promotion of optimum production of such stocks and the cooperation in the management, research and enhancement of Pacific salmon stocks.
- 1983 Eastern Pacific Ocean Tuna Fishing Agreement [16 U.S.C 972] - The main objective of the Agreement is to ensure the conservation and rational utilization of tuna resources in the eastern Pacific Ocean. The Agreement, when in force, would establish a Council whose main activity would be to issue licenses access to fishing in the Agreement Area to vessels of States parties to the Agreement against payment of a fee based on net registered tonnage of the vessel requesting the license.
- 1982 United Nations Convention on the Law of the Sea [U.N. Doc.A/CONF.62/122;21 I.L.M. 1261 (1982)] - The Convention attempts to lay down a comprehensive regime for almost every aspect of ocean use.

- 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean [16 U.S.C 3601] - The main purposes of the Convention (includes Canada, Denmark, EU, Iceland, Norway, Russia, and United States) are: (a) to promote the acquisition, analysis, and dissemination of scientific information pertaining to salmon stocks in the North Atlantic Ocean; and (b) to promote the conservation, restoration, enhancement, and rational management of salmon stocks in the North Atlantic Ocean through international cooperation.
- 1982 Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest [for Secretariat see South Pacific Forum Fisheries Agency, <http://www.ffa.int>] - To coordinate and harmonize the management of fisheries with regard to common stocks within the Fisheries Zones of the contracting Parties (member countries of the Forum Fisheries Agency), for the benefit of their people. To this end, the parties undertake to establish a coordinated approach to the fishing of the common in the Fisheries Zones by foreign fishing vessels, and in particular: (a) to establish principles for the granting of priority to applications by fishing vessels of the Parties to fish within the Fisheries Zones other foreign fishing vessels; (b) to establish, as a minimum, uniform terms and conditions under which the Parties may license foreign fishing vessels to fish within the Fisheries Zones; and (c) to establish other uniform terms and conditions under which the Parties may license foreign fishing vessels to fish within the Fisheries Zones.
- 1982 Agreement instituting the Latin American Organization for Fisheries Development (OLDEPESCA) [<http://www.oceanlaw.net>] - The main objective of the Agreement is to provide adequately for the food needs of Latin America and the Caribbean, using the potential of fishery resources for the benefit of the people in the region. The Organization is actively involved in areas of research in fisheries resources, exploitation of fisheries resources, aquaculture, fisheries technology, etc.
- 1980 Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries [<http://www.oceanlaw.net>] - The Convention established the North-East Atlantic Fisheries Commission (applying to all fisheries resources in the Northeast Atlantic), which is charged with performing its functions "in the interests of the conservation and optimum utilization of the fishery resources of the Convention area."
- 1980 Convention on the Conservation of Antarctic Marine Living Resources [16 U.S.C 2431] - The objective is to ensure that all harvesting and research activities are conducted in accordance with the Convention; to formulate, adopt and revise conservation measures; to compile, analyze and disseminate information on the status of resources and to facilitate research activities.
- 1979 South Pacific Forum Fisheries Agency Convention [ATS 1979 No. 0016, NZTS 1979 No. 6] - The Convention established the Forum Fisheries Agency, with the following objectives: the conservation and optimum of the species covered by the

- Convention; the promotion of regional cooperation and coordination in respect of fisheries policies; securing of maximum benefits from the living resources of the region for their peoples and for the region as a whole and in particular the developing countries; and facilitating the collection, analysis, evaluation and dissemination of relevant statistical scientific and economic information about the resources covered by the Convention.
- 1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries [Title II of P.L.104-43] - The establishment and maintenance of an international organization whose object is to contribute through consultation and cooperation to the optimum utilization, rational management and conservation of the fishery resources of the Convention Area.
- 1973 Convention on Fishing and Conservation of the Living Resources of the Baltic Sea and the Belts [see EuroLex, doc. 283A0826(02), [http://europa.eu.int/eur-lex/en/lif/dat/1983/en\\_283A0826\\_02.html](http://europa.eu.int/eur-lex/en/lif/dat/1983/en_283A0826_02.html)] - The main objectives of the Convention are to preserve and increase the living resources of the Baltic Sea and the Belts and to obtain the optimum yield, in particular, to expand and coordinate studies towards these ends and to put into effect organizational and technical projects on conservation and growth of the living resources on a just and equitable basis as well as take other steps towards rational and exploitation of the living resources.
- 1966 International Convention for the Conservation of Atlantic Tuna (and Protocols) [16 U.S.C 971] - The objective is to co-operate in maintaining the population of tunas and tuna-like species found in the Atlantic Ocean and the adjacent seas at levels that will permit the maximum sustainable catch for food and other purposes.
- 1962 Warsaw Agreement Concerning Co-Operation in Marine Fishing [46OUNTS219, see <http://www.tufts.edu/departments/fletcher/multi/texts/tre-0330.txt>] - The objective is the development of marine fishing, fishing techniques and fish processing technology and scientific research into the condition of live marine resources and cooperation in the development of fishing in the open sea, on practical matters relating to the organization of fishing, on the exchange the results of exploration for new fishing grounds and other research (signed by Bulgaria, Cuba, Poland, Romania, and Russia).
- 1959 Convention Concerning Fishing in the Black Sea [377UNTS203, see <http://www.tufts.edu/departments/fletcher/multi/texts/tre-0230.txt>] - The objective is to promote the rational utilization of the fishery resources of the Black Sea and the development of marine fishing and to promote mutual assistance in improving fishing technique and in carrying out research in the field of ichthyology and hydrobiology for the purpose of maintaining and augmenting the stocks of fish in the Black Sea with a view to increasing the yield.

- 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas [ATS 1963 No. 0012] – This Convention was designed to lay down a general regime for the conservation and rational exploitation of high seas living resources. However, it was never ratified by fishing nations and proved to be something of a “dead-letter.” Furthermore, the Convention has now largely been superseded by the Law of the Sea Convention, although it remains in force for those States which are not party to that Convention.
- 1958 Geneva Convention on the High Seas [UNTS No. 6465, vol. 450, pp. 82-103, see <http://www.tufts.edu/departments/fletcher/multi/texts/BH364.txt>] – Established a regime for the high seas. Preserves the traditional freedom of the high seas, including the freedom of fishing. The Convention has now largely been superseded by the Law of the Sea Convention, although it remains in force for those States which are not party to that Convention.
- 1958 Geneva Convention on the Continental Shelf [ ; Act 1967 No. 118 and 1973 No. 161; CN 1958 p. 370; UKTS 1964 No. 39 (Cmnd. 2422); Cmnd. 584; UNTS 499 p. 311; TIAS 5578; CTS 1970 No. 4; NZTS 1965 No. 2] – Established a general regime for the continental shelf, defined in Article 1 as (a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; or (b) the seabed and subsoil of similar submarine areas adjacent to the coasts of islands. Includes measures for the exploitation of the natural resources of the continental shelf, including sedentary species.
- 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone [ ; Act 1973 No. 161; CN 1958 p. 355; UKTS 1965 No. 3 (Cmnd. 2511); Cmnd. 584; UNTS 516 p. 205; TIAS 5639] – Established a general regime for the territorial sea and contiguous zone, although did not contain agreement on the extent of such zones. The Convention has now largely been superseded by the Law of the Sea Convention, although it remains in force for those States which are not party to that Convention.
- 1953 Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea [as amended: 50 Stat. 325; 67 Stat. 494; 79 Stat. 902; 97 Stat. 78] – The main objective is the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea.
- 1952 Agreement Concerning Measures for the Protection of the Stocks of Deep-Sea Prawns, European Lobsters, Norway Lobsters and Crabs [175UNTS205, see <http://www.tufts.edu/departments/fletcher/multi/texts/tre-0100.txt>] – The objective is to protect stocks of deep-sea prawns, European lobsters, Norway lobsters and crabs, through the establishment of certain technical measures and other action as is necessary to protect the stocks.

- 1952 Agreements between Chile, Ecuador and Peru on the Exploitation and Conservation of the Maritime Resources of the South Pacific and 1954 Supplementary Agreements [<http://www.oceanlaw.net>] – The agreements organized the Standing Committee of the Conference on the Use and Conservation of the Marine Resources of the South Pacific.
- 1949 Convention for the establishment of an Inter-American Tropical Tuna Commission [Tuna Conventions Act of 1950 (64 Stat. 777), as amended (16 U.S.C 951-961)] - The main objectives of the Convention are to maintain the populations of yellowfin and skipjack tuna and other kind of fish taken by tuna vessels in the Eastern Pacific Ocean and to cooperate in the gathering and interpretation of factual information to facilitate maintaining the populations of these fish at a level which permits maximum sustainable catches year after year.
- 1949 Agreement for the establishment of a General Fisheries Council for the Mediterranean
- Text as amended in 1997 [FAO Council, Hundred and Thirteenth Session] – The objective is to promote the development, conservation and management of living marine resources; to formulate and recommend conservation measures; to encourage training cooperative projects.
- 1948 Agreement for the Establishment of the Indo-Pacific Fisheries Commission [ATS 1949 No. 0004] – The objective is to promote the full and proper utilization of living aquatic resources by the development and management of fishing and culture operations and by development of related processing and marketing activities.

### **International Fisheries Resolutions, Declarations, and other Non-Binding Instruments**

- 1997 Majuro Declaration [6/13/1997, Republic of the Marshall Islands] – Declared the intent of the parties to establish a mechanism for the conservation of highly migratory fish stocks in the region, based on the United Nations Convention on the Law of the Sea Treaty, and the Implementing Agreement.
- 1995 FAO Code of Conduct for Responsible Fisheries [adopted by the Twenty-eighth Session of the FAO Conference, 10/31/1995] - The Code seeks to lay down a comprehensive set of guidelines and principles, in accordance with the relevant rules of international law, which, inter alia, promote responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.
- 1995 Rome Consensus on World Fisheries [adopted by the FAO Ministerial Conference on Fisheries, 14-15/3/1995] – As a follow-up to UNCED a ministerial meeting was held in Rome to endorse the consensus on world fisheries and encourage nations to take several actions aimed at reducing overharvesting of fisheries and increasing research into the sustainable levels of exploitation.

- 1995 Panama Declaration [issued at the XII Summit Heads of State and Government of the Group of Rio] - The La Jolla Agreement and the Declaration of Panama are two voluntary instruments adopted by States in the Eastern Pacific Ocean to deal with the problem of dolphin bycatch in the yellowfin tuna fisheries. They have now largely been superseded by the 1998 Agreement on the International Dolphin Protection Program, which is a binding international agreement based on the two earlier instruments. The La Jolla Agreement was adopted in April 1992 and called for the reduction of "the take of dolphins to levels approaching zero," and established a schedule of dolphin mortality limits, which progressively reduced the limits on the number of dolphins which could be caught each year until 1999, when the number should be less than 5000 dolphins. The Panama Declaration was adopted in 1995 to promote and strengthen the 1992 La Jolla Agreement and to pave the way for the adoption of a binding instrument in the future.
- 1995 Kyoto Declaration and Plan of Action [issued at the International Conference on the Sustainable Contribution of Fisheries to Food Security, 4-9/12/1995, Kyoto, Japan] - The Kyoto Declaration and Plan of Action were adopted to address the increasing demand for fishery products. The adopted plan consisted of a set of immediate actions to be taken by States, either directly or in cooperation with other States, or through cooperation in the FAO and other appropriate international organizations, in order to enhance sustainable fisheries management.
- 1992 United Nations Convention on Environment and Development (UNCED) Agenda 21, Chapter 17 Declaration of Principles [A/CONF.151/26 (Vol. I-III) 3-14/6/1992, Rio de Janeiro] - The Chapter of Agenda 21 relevant to fishing is Chapter 17, which identifies the importance of the marine environment, describing it as "an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development." It outlines certain program areas that include integrated management and sustainable development of coastal areas, including EEZs, sustainable use and conservation of marine living resources of the high seas and strengthening international, including regional, co-operation and coordination.
- 1992 Declaration of Cancun [issued at the International Conference on Responsible Fishing, 6-8/5/1992, Cancun, Mexico] - Declares that states with a view to ensuring supply of fish products to feed present and future populations, should adopt effective fisheries planning and management standards which, within the context of sustainable development, will promote the maintenance of the quantity, quality, diversity and economic availability of fisheries resources.
- 1992 La Jolla Agreement on the Reduction of Dolphin Mortality in the Eastern Pacific Ocean - See Declaration of Panama.
- 1989 United Nations Resolution 44/225 on Large-Scale Pelagic Driftnet Fishing and its Impacts on the Living Resources of the World's Oceans and Seas [UNGA Resolution 26/215. 85th plenary meeting, 22 December 1989] - United Nations

- resolutions expressing concerns over driftnet fishing, and in some cases, particularly small pelagics, called for a ban of the use of driftnet fishing.
- 1972 Santa Domingo Declaration [adopted by the Meeting of Ministers, 7/6/1972, Santa Domingo] – Established States' territorial sea, up to 12 nautical miles off the shore.
- 1972 Yaounde Declaration [Conclusions in the General Report of the African States Regional Seminar on the Law of the Sea, 20-30/6/1972, Yaounde] – Established sovereignty of African states over their territorial seas, up to 12 nautical miles from the shore.
- 1970 Montevideo Declaration on the Law of the Sea [adopted by the States Representing the Montevideo Meeting on the Law of the Sea, 8/5/1970] – Declares the rights of states to the natural resources in their territorial seas, and the right to explore and conserve the resources of the sea adjacent to their territorial resources.
- 1970 Declaration of the Latin American States on the Law of the Sea [adopted at the Latin American Meeting on Aspects of the Law of the Sea, 8/8/1970, Lima, Peru] – Declares principles of the law of the sea of the rights of states to explore and conserve the resources in their sovereign territorial seas.

### International Fisheries Case Law

- Camouco case* (Panama v. France) (Application for prompt release)  
ITLOS; 7 February 2000
- Southern Bluefin Tuna cases* (New Zealand v. Japan; Australia v. Japan) (Provisional Measures)  
ITLOS; 27 August 1999
- M/V "Saiga" (No. 2)* (Saint Vincent and the Grenadines v. Guinea)  
ITLOS; 1 July 1999
- Fisheries Jurisdiction case* (Spain v. Canada)  
ICJ; 4 December 1998
- M/V "Saiga" (No. 1)* (Saint Vincent and the Grenadines v. Guinea)  
ITLOS; 4 December 1997
- Fisheries Jurisdiction case* (United Kingdom v. Iceland)  
ICJ; 1972-1974
- Fisheries case* (United Kingdom v. Norway)  
ICJ; 18 December 1951

## Regional Fisheries Management Organizations

Asia-Pacific Fisheries Commission (APFIC)

[www.fao.org/fi/regsubof/asiafit/aft\\_pg1.htm](http://www.fao.org/fi/regsubof/asiafit/aft_pg1.htm)

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

[www.ccamlr.org](http://www.ccamlr.org)

Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

[www.home.aone.net.au/ccsbt/index.html](http://www.home.aone.net.au/ccsbt/index.html)

Committee for the Eastern Central Atlantic Fisheries (CECAF)

[www.fao.org](http://www.fao.org)

General Fisheries Council for the Mediterranean (GFCM)

[www.fao.org/fi/body/gfcm/gfcm.asp](http://www.fao.org/fi/body/gfcm/gfcm.asp)

Indian Ocean Tuna Commission (IOTC)

[www.seychelles.net/iotc/](http://www.seychelles.net/iotc/)

Inter-American Tropical Tuna Commission (IATTC)

[www.iattc.org/](http://www.iattc.org/)

International Baltic Sea Fisheries Commission (IBSFC)

[www.ibsfc.org](http://www.ibsfc.org)

International Commission for the Conservation of Atlantic Tunas (ICCAT)

[www.iccat.org](http://www.iccat.org)

International Council for the Exploration of the Sea (ICES)

[www.ices.dk](http://www.ices.dk)

International Pacific Halibut Commission (IPHC)

[www.iphc.washington.edu/halcom/](http://www.iphc.washington.edu/halcom/)

International Whaling Commission (IWC)

<http://ourworld.compuserve.com/homepages/iwcoffice/>

North Atlantic Marine Mammal Commission (NAMMCO)

[www.nammco.no](http://www.nammco.no)

North Atlantic Salmon Conservation Organization (NASCO)

[www.nasco.org.uk](http://www.nasco.org.uk)

North East Atlantic Fisheries Commission (NEAFC)

[www.neafc.org](http://www.neafc.org)

North Pacific Anadromous Fish Commission (NPAFC)

[www.npafc.org](http://www.npafc.org)

North Pacific Marine Science Organization (PICES)

<http://pices.ios.bc.ca/>

Northwest Atlantic Fisheries Organization (NAFO)

[www.nafo.ca](http://www.nafo.ca)

Pacific Salmon Commission (PSC)

[www.psc.org](http://www.psc.org)

Permanent Commission for the South Pacific (CPPS)

<http://www.gsf.de/UNEP/chicpps.html>

Regional Fisheries Committee for the Gulf of Guinea (COREP)

*-no web information available*

South Pacific Forum Fisheries Agency (FFA)

[www.ffa.int](http://www.ffa.int)

Sub-Regional Commission on Fisheries (CRSP)

*-no web information available*

West Indian Ocean Tuna Organization (WIOTO)

*-no web information available*

Western Central Atlantic Fisheries Commission (WECAFC)

<http://www.fao.org/fi/body/body.asp>

### **Additional Sources: International Fisheries Law**

<http://joshua.law.pace.edu/env/seafish.html> – comprehensive list of international fisheries agreements and conventions

<http://www.oceanlaw.org/commentary/commentary.html> – commentary on UNCLOS

<http://oneworld.org/ecdpm> – European Centre for Development Policy Management (ECDPM), various publications concerning EU fisheries agreements

<http://www.sils.org/find/find-ocean.htm> – one stop shop for links to international fisheries agreements and organizations

**Major Fisheries Agreements of West African Coastal States  
(in chronological order)**

(Source: [http://www.oneworld.org/ecdpm/pubs/wp52\\_gb.htm](http://www.oneworld.org/ecdpm/pubs/wp52_gb.htm))

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Morocco	Spain 83; France 84, 89; Japan 85-89; Romania 87; EEC 87, 88, 90, 91, 92, 95; USSR 91; Russia 92; 95; Portugal 93,94.
Mauritania	Korea R. 83; Senegal 83; Portugal 84,85; Tunisia 84; Germany DEM 84; USSR 87; Romania 87; France 87; Algeria 87; Ghana 88; EEC 88, 90 , 93; Spain 90, 94; C. Verde 90; China 91 Japan 91, 95, Russia 93; Ukraine 93; Germany 95; Poland 96.
Senegal	Mauritania 83; EEC 83, 85, 86, 87, 90, 92, 94; Canada 84; Spain 85, C.Verde 85; Cameroon 91; Japan 91; Gambia 92, 94; G.Bissau 93
Gambia	EEC 86, 90, 93; Japan 92; Senegal 92, 94.
C. Verde	Senegal 85; Guinea 89; Portugal 90; EEC 90, 94; Mauritania 90
G. Bissau	EEC 83, 86,87, 89,91,94; Sweden 83; Portugal 83; China 84; Guinea 85, 88 USSR 86, 90 ,91; Algeria 87; Cote d'Ivoire 87; Japan 93 Senegal 93.
Guinea	EEC 83, 86, 87, 89, 91, 94; Spain 83, 84; G.Bissau 85, 88; C. Verde 89; Nigeria 91
Sierra Leone	USSR 86, 88, Libya 88; Palestine 88; EEC 90 Japan 90, 92; Nigeria 91.
Cote d'Ivoire	Seychelles 84; G. Bissau 87; Ghana 88; EEC 91, 94.
Ghana	Cuba 85; Congo 85; Angola 86, 88; Mauritania 88; C. d'Ivoire 88; Faroe Is. 89
Nigeria	China 88, Angola 88, 91; USSR 90; S. Leone 91; Guinea 91 Eq. Guinea 91
Cameroon	Senegal 91.
Eq. Guinea	EEC 84, 89, 94; Nigeria 91 Poland 92.
Sao Tome & Principe	Spain 84; EEC 84, 86, 90,93; USSR 87, 88, 89.
Gabon	Korea R. 85; EEC 88.
Congo	Ghana 85; Angola 85.
Zaire (Congo)	Portugal 83.
Angola	France 83; Spain 84; USSR 84, 87, 89; Korea R. 85; Congo 85; Ghana 86, 88; Nigeria 88, 91; EEC 89, 90, 92, 94; Namibia 90; Poland 93; S. Tome & Principe. 94.

## European Union Fishing Access Agreements

(Source: [http://www.oneworld.org/ecdpm/pubs/wp52\\_gb.htm](http://www.oneworld.org/ecdpm/pubs/wp52_gb.htm))

Country	Dates	Allowed Annual Catches	EU fleets
Angola	03/05/1996 - 02/05/1999		France, Greece, Portugal, Spain
Cape Verde	06/09/1994 - 05/09/1997	4,580 t of tuna	France, Portugal, Spain
Comoros	20/07/1994 - 19/07/1997	4,500 t of tuna	France, Spain
Cote d'Ivoire	01/07/1994 - 30/06/1997	2,750 t of tuna	France, Spain
Equatorial Guinea	01/07/1994 - 30/06/1997	27,450 t of tuna	France, Spain
Gambia (previous agreement)	01/07/1993 - 30/06/1996		France, Greece, Italy, Spain
Guinea (Conakry)	01/01/1996 - 31/12/1997		France, Greece, Italy, Portugal, Spain
Guinea-Bissau	16/06/1995 - 15/06/1997		France, Italy, Portugal, Spain
Madagascar	21/05/1995 - 20/05/1998	9,000 t of tuna	France, Spain
Mauritania	01/08/1996 - 31/07/2001		France, Germany, Ireland, Italy, Netherlands, Portugal, Spain, UK
Mauritius	01/12/1993 - 30/11/1996	6,000 t of tuna	France, Spain
Sao Tome & Principe	01/06/1996 - 31/05/1999	9,000 t of tuna	France, Portugal, Spain
Senegal (previous agreement)	02/10/1993 - 01/06/1996		France, Greece, Italy, Portugal, Spain
Seychelles	18/01/1996 - 17/01/1999	46,000 t of tuna	France, Spain





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