

# **GREENPEACE**

## **Suggested Draft High Seas Implementing Agreement for the Conservation and Management of the Marine Environment in Areas Beyond National Jurisdiction**







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**March 2008**

### **Introduction**

The current oceans governance regime has significant gaps with respect to biodiversity in areas beyond national jurisdiction. Currently, there is clear lack of: (i) An explicit mandate for the protection, conservation and sustainable use of living resources in the high seas; (ii) harmonization or coordination among or between the relevant instruments or regional, international and intergovernmental bodies; (iii) implementation tools, such as a mandate to establish marine reserves and environmental impact assessments in areas beyond national jurisdiction; (iv) compliance and enforcement mechanisms, as well as monitoring, control and surveillance of extractive or potentially polluting activities; (v) clear rules governing access to and the sharing of benefits derived from high seas genetic resources; and (vi) a mechanism to assess and regulate new and emerging human activities on the high seas.

The UN Convention on the Law of the Sea (UNCLOS) is now 25 years old. The time has come to consider the establishment of a new implementing agreement under UNCLOS. Such an implementing agreement would be comprehensive and legally binding, and build upon the existing provisions of UNCLOS, providing a clear mandate to protect biodiversity on the high seas, based on the precautionary principle and ecosystem-based management for the next 25 years and beyond.

The elements of this text provide a model implementing agreement for the conservation and management articles of UNCLOS with respect to biodiversity on the high seas. Where possible, its provisions, referenced throughout, were taken from current regional and international treaties and instruments. This text is provided by way of suggestion and is subject to correction and clarification as necessary.

## Glossary

Aarhus: [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.](#)

CBD: [Convention on Biological Diversity, Rio de Janeiro 5 June 1992](#)

COFI: [FAO Committee on Fisheries](#)

COFI Workshop: [Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations,” 12-14 June 2006](#)

FAO Compliance Agreement: [FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Rome, 24 November 1993.](#)

FSA: [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](#)

HELCOM/OSPAR: [Statement on the Ecosystem Approach to the Management of Human Activities by first Joint Ministerial Meeting of the Helsinki and Oskar Commissions, “Towards an ecosystem approach to the management of human activities,” Bremen, 25-26 June 2003.](#)

ICP: Informal Consultative Process on Oceans and the Law of the Sea

IPOA: [International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing](#)

ISBA: [International Seabed Authority](#)

ITPGR: [International Treaty on Plant Genetic Resources for Food and Agriculture](#), 3 November 2001.

JPOI: [Johannesburg Plan of Implementation \(2002\)](#)

London Convention: [Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and 1996 Protocol Thereto](#)

Madrid Protocol: [Protocol on Environmental Protection to the Antarctic Treaty, 4 October 1991](#)

SIOFA: [South Indian Ocean Fisheries Agreement, 11 July 1996.](#)

SPA Protocol: [Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean](#) 10 June 1995.

SUBSTTA: [Subsidiary Body on Scientific, Technical, and Technological Advice](#)

UNCLOS: [The UN Convention on the Law of the Sea, 10 December 1982.](#)

WCPFC: [Western and Central Pacific Fisheries Commission](#)

WCPFC Boarding and Inspection Regime: [Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures \(2006\).](#)

WHC: [Convention Concerning the Protection of the World Cultural and Natural Heritage, 23 November 1972.](#)

WSSD: [World Summit on Sustainable Development](#)



**Draft High Seas Implementing Agreement for the Conservation and Management of the  
Marine Environment in Areas Beyond National Jurisdiction**

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Suggested Text

**High Seas Implementing Agreement for the Conservation and Management of the Marine Environment  
in Areas Beyond National Jurisdiction**

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, {ref. FSA preamble}

Determined to enhance the protection and conservation of the marine environment in areas beyond national jurisdiction,

Conscious of the need to co-operate to conserve, protect and restore the health and integrity of ecosystems and that States have, in this respect, common but differentiated responsibilities, {ref. SPA Protocol}

Noting the abundance and diversity of marine genetic resources, their dynamic nature, and the role of these resources as important constituents of marine biological diversity, their role in biogeochemical cycles and in sustaining life on earth, {ref. agreed components ICP}

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the protection and conservation of the marine environment in areas beyond national jurisdiction, {ref. FSA preamble}

Considering that citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights, {ref. Aarhus preamble}

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public

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the opportunity to express its concerns and enable public authorities to take due account of such concerns, {ref. Aarhus preamble}

Recognizing also that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them, {ref. Aarhus preamble}

Recognizing further the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection, {ref. Aarhus preamble}

Convinced that an agreement for the development of a comprehensive regime including temporal and spatial closures for the protection of the marine environment in areas beyond national jurisdiction is in the interest of humankind as a whole,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law, {ref. FSA preamble}

Have agreed as follows:

## **PART I GENERAL PROVISIONS**

### **Article 1 Objective**

The objective of this Agreement is to ensure the long-term conservation and sustainable management of marine life, ecosystems and biological diversity, the protection and preservation of the marine environment, the fair and equitable sharing of the benefits arising out of the utilization of marine genetic resources {ref. CBD Art 1} in areas beyond national jurisdiction and the effective implementation of all the relevant provisions of the Law of the Sea Convention in accordance with the ecosystem approach and precautionary principle.

### **Article 2 Principles**

**{ref. Madrid Protocol Art 2}**

The following principles shall be fundamental considerations in the planning and conduct of all activities in the areas beyond national jurisdiction:

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1. The protection of areas beyond national jurisdiction and marine genetic resources located in such areas;
2. Application of the ecosystem approach and the precautionary principle;
3. Use of the best available scientific information;
4. A commitment to the establishment and maintenance of a representative network of marine protected areas.
5. The sustainable and equitable use of marine life and marine genetic resources for the benefit of present and future generations; {ref. CBD Preamble} {ref. CBD Art 2 definition of 'sustainable use'}
6. The undertaking of comprehensive and public prior environmental impact assessments, including the assessment of cumulative impacts;
7. The application of recognized principles of good environmental governance, including access to information, transparency, and public participation, according to Article ;
8. The principle of common but differentiated responsibilities, whereby all States have the responsibility to protect the marine environment in areas beyond national jurisdiction, and financial aid and technology transfer and capacity building can assist developing States to increase levels of participation and compliance;
9. Ongoing co-operation between and among States to achieve the purposes of this Agreement.

### **Article 3 Implementation**

The Parties shall attain the objective of this Agreement applying the ecosystem approach and precautionary principle, consistently with the best available scientific information and contemporary international best practice through:

1. The implementation of comprehensive prior environmental assessments and ongoing monitoring of the marine environment according to Part IV;
2. The designation of a global representative network of high seas marine protected areas, according to Part V; {ref. JPOI para 32(c)}
3. The establishment of oceans management organizations, according to Part III;
4. The establishment of a regime for access to and sharing of benefits derived from marine genetic resources in areas beyond

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national jurisdiction, according to Parts VI and VII;

5. The provision of access to and dissemination of information, and transparency in decision-making processes, according to Articles 14 and 18; and
6. The establishment of an effective centralised monitoring, control, surveillance, compliance and enforcement mechanism for human activities in areas beyond national jurisdiction according to Part XI.

### **Article 4 Use of Terms**

For the purposes of this Agreement:

1. "Areas Beyond National Jurisdiction" means the high seas including the water column and the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction; {ref. UNCLOS Art 1(1)}
2. "Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems; {ref. CBD Art 2}
3. "Bioprospecting" means [the search for marine genetic resources in areas beyond national jurisdiction with the sole or primary purpose of identifying marine genetic resources for commercial or other derivative use as genetic resources or for the use of genetic information contained in the marine genetic resources;]

Or

[the process of gathering information from the biosphere on the molecular composition of genetic resources for the development of new commercial products;] { ref. UNEP/CBD/SBSTTA/8/INF/3/Rev.1, para. 68}

4. "Catch" includes any fish and any marine genetic resource;
5. "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
6. "Dumping" includes:
  - (1) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
  - (2) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea; {ref. London Convention}
  - (3) disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or

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other man-made structures at sea and their equipment,

(4) the discharge of any substance during passage, and

(5) placement of materials {these latter are excluded from dumping definition under London Convention}

7. “Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

8. “Ecosystem approach” is an integrated approach to the management of human activities that impact on the marine environment, based on the precautionary principle, in order both to conserve or, where necessary, restore, the intrinsic value of continued unimpaired functioning of ecosystems and to allow their continued sustainable use in meeting human needs;

9. “Effect” includes:

(a) any direct or indirect effect,

(b) any temporary or permanent effect,

(c) any chronic or acute effect,

(d) any past, present, or future effect, and

(e) any cumulative effect which arises over time or in combination with other effects;

10. “Exploration” means any activity aimed at investigating a marine area beyond national jurisdiction, or any part of the area, and includes the search for marine life and bioprospecting;

11. “Extractive activities” means any activity with the sole or primary purpose of removing marine life, material or marine genetic resources from an area beyond national jurisdiction other than for the purpose of taking samples for marine scientific research;

12. “*Ex situ* conservation” means the conservation of marine life or marine genetic resources outside their natural habitat; {ref. IGPR Art 2}

13. “Fish” includes any marine life;

14. “Fishing” means: {ref. SIOFA Art 1(g)}

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- (i) the actual or attempted searching for, catching, taking or harvesting of fish;
  - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;
  - (iii) any operation at sea in support of, or in preparation for, any activity described in this definition, including transshipment; and
  - (iv) the use of any other vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
15. "High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State; {ref. UNCLOS Art 86}
16. "Impaired" in relation to the environment shall include any adverse effects on the marine environment;
17. "*In situ* conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of marine life in their natural surroundings; {ref. ITPGR Art 2}
18. "International conservation and management measures" means conservation and management measures agreed by oceans management organizations or regional fisheries management organizations or otherwise agreed under this Agreement;
19. "Marine life" includes all living organisms or the components thereof, including living organisms that are sedentary species, , organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the sea-bed or the subsoil, and includes any member of such species which is no longer living; {ref. UNCLOS Art 77(4)}
20. "MCSCE" shall mean monitoring, control, surveillance, compliance and enforcement according to the provisions in Part XI.
21. "Marine environment" [includes all natural resources, including:
- (i) air, water, soil, fauna and flora, and the interaction between the same factors,
  - (ii) ecosystems and their constituent parts,
  - (iii) biological diversity,
  - (iv) amenity values, and

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(vi) social, economic, aesthetic, and cultural conditions which are affected by the matters stated in paragraphs (i) to (v) of this definition;]

or

[includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof"]; {International Seabed authority, Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area," ISBA 6/A/18, 20 July 2000, Reg 1.3.c}

22. "Marine genetic resource" means any material located in or taken from an area beyond national jurisdiction and of plant, animal, microbial or other origin containing functional units of heredity which have of actual or potential value; {CBD Art 2 definitions } { ref. ITPGR Art 2}

23. "Marine resources" includes marine life and marine genetic resources;

24. "Marine scientific research" means any activity undertaken in an area beyond national jurisdiction with the sole or primary purpose being to expand scientific knowledge of the marine environment, marine life or marine genetic resources; { not defined in UNCLOS; ref. UNCLOS Art 240}

25. "Mere Passage" means navigation through the high seas for the purpose of traversing the high seas. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress[provided that mere passage excludes dumping[,or other activities?]]; {ref. UNCLOS Art 18}

26. "Nationals" include real and corporate persons and such as owners, operators, charterers and beneficial owners of vessels;

27. "Oceans management organization" means a global, regional or subregional oceans management organization or arrangement established pursuant to Part III of this Agreement, and 'organization' includes 'arrangement';

28. "Specified Activity" means fishing, bioprospecting, exploring, extractive activities, marine scientific research, or any other activity which takes place in areas beyond national jurisdiction other than mere passage; and

29. "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.

## **Article 5 Application**

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1. Unless otherwise provided, this Agreement applies to any activity taking place or intended to take place in any area beyond national jurisdiction, [except where such activity would be governed by Part XI of the Law of the Sea Convention] and any activity or intended activity which affects or may reasonably be expected to affect the conservation and management of the marine environment in areas beyond national jurisdiction including marine life and marine genetic resources situated in such areas.

[2. Articles [] apply also to the conservation and management of the marine environment within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Law of the Sea Convention.] {ref. FSA Art 3.1}

3. States Parties shall give due consideration to the respective capacities of developing States to apply articles [ ] and their need for assistance as provided for in Part XII this Agreement.

### **Article 6 Relationship Between this Agreement, the Law of the Sea Convention and the Convention on Biological Diversity**

This Agreement shall be interpreted and applied in a manner consistent with the Law of the Sea Convention and the Convention on Biological Diversity. {ref. FSA Art 4}

## **PART II CONSERVATION AND MANAGEMENT IN AREAS BEYOND NATIONAL JURISDICTION**

### **Article 7 Activities in Areas Beyond National Jurisdiction**

1. States Parties shall ensure that the environmental impact assessment provisions in Part IV are implemented before any Specified Activity in areas beyond national jurisdiction takes place.
2. States Parties shall ensure that all activities in areas beyond national jurisdiction are carried out in compliance with Article 25.

### **Article 8 Application of the Precautionary Principle**

1. States Parties shall apply the precautionary principle widely to conservation and management of the marine environment in areas beyond national jurisdiction in order to protect and, where necessary, restore, marine life and biological diversity and to preserve the marine environment. {ref. FSA Art 6}
2. States Parties shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures. {ref. FSA Art 6}
3. In implementing the precautionary principle with respect to fishing, States Parties shall apply the provisions of Article 6.3 – 6.7

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of the Fish Stocks Agreement *mutatis mutandis*.

## **Article 9 Application of the Ecosystem Approach**

1. States Parties shall apply the ecosystem approach widely to the conservation and management of the marine environment in areas beyond national jurisdiction in order to protect the marine life and preserve the marine environment.
2. States Parties shall apply an integrated approach to the management of all human activities that impact on the marine environment, taking into account the complexity of interactions between living and non-living components of ecosystems. States Parties shall aim to maintain ecosystem integrity in order both to conserve or, where necessary, restore, the intrinsic value of their continued unimpaired functioning and to allow their continued sustainable use in meeting human needs for current and future generations. {ref. HELCOM/OSPAR} {ref. CBD Art V/6}
3. In applying the ecosystem approach, States Parties shall be guided by the application of the precautionary principle, making use of the best available scientific knowledge while recognising and accounting for uncertainties and indeterminacies in that knowledge base.

## **Article 10 Compatibility of Conservation and Management Measures**

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the marine environment within areas under national jurisdiction as provided for in the Convention: {ref. FSA Art 7(l)}
  - a. The relevant coastal States and the States whose nationals undertake activities in adjacent high seas area or in in the region shall seek, to agree upon the measures necessary for the protection of the marine environment in adjacent areas with a view to ensuring conservation and promoting the objectives of this Agreement.
  - b. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure the restoration and protection of the marine environment.
2. To this end, coastal States and States undertaking activities on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of the marine environment:
  - a. States Parties shall take into account the conservation and management measures adopted and applied in accordance with Article 61 of the Convention by coastal States within areas under national jurisdiction and ensure that measures established do not undermine the effectiveness of such measures;

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- b. take into account previously agreed measures established and applied for the high seas in accordance with the Convention by relevant coastal States and States undertaking activities on the high seas;
  - c. take into account previously agreed measures established and applied in accordance with the Convention in respect by a subregional or regional fisheries management organization or arrangement or an oceans management organization;
  - d. with respect to impacts on fish, take into account the ecosystem approach and the biological unity and other biological characteristics of fish stocks, relationships between the distribution of stocks, the fisheries, marine ecosystems, marine life, and the geographical particularities of the region concerned, including the extent to which stocks occur and are fished in areas under national jurisdiction;
  - e. take into account the respective dependence of the coastal States and the States undertaking activities on the high seas on the activities concerned; and
  - f. ensure that such measures do not result in harmful impact on the marine life or the marine environment as a whole.
3. In giving effect to their duty to cooperate, States Parties shall make every effort to agree on compatible conservation and management measures within a reasonable period of time, consistent with the Principles in Article 2 of this Agreement.
4. If no agreement can be reached within a reasonable period of time, any of the States Parties concerned may invoke the procedures for the settlement of disputes provided for in Part XVII.
5. Pending agreement on compatible conservation and management measures, the States Parties concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States Parties concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part XVII.
6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States Parties concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.
7. Coastal States shall regularly inform States undertaking activities on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements or regional oceans

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management organizations or through other appropriate means, of the measures they have adopted within areas under their national jurisdiction.

8. States undertaking activities on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements or oceans management organizations, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which carry out activities on the high seas.

### **Article 11 Fishing**

1. States Parties, when fishing in areas beyond national jurisdiction, shall:

a. assess the impacts of human activities and environmental factors on the marine environment, including on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks and the marine environment; {ref. FSA Art 5(d)}

b. adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their sustainability may become threatened; {ref. FSA Art 5(e)}

c. minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective and environmentally safe fishing gear and techniques; {ref. FSA Art 5(f)}

d. 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 biological diversity; {ref. FSA Art 5(h)}

e. take into account the interests of artisanal and subsistence fishers; {ref. FSA Art 5(i)}

f. collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex IV as well as information from national and international research programmes; {ref. FSA Art 5(j)}

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g. promote and conduct scientific research and develop appropriate technologies in support of conservation and management. {ref FSA Art 5(k)}

### **PART III. MECHANISMS FOR INTERNATIONAL CO-OPERATION**

#### **Article 12 Co-operation for Conservation and Management**

{ref. CBD Art 5}

1. Coastal States and States planning or undertaking activities in areas beyond national jurisdiction, through their nationals or their flagged vessels or otherwise, shall, in accordance with the Convention, pursue co-operation either directly or through appropriate oceans management organizations, [taking into account the specific characteristics of the subregion or region,] to ensure the effective conservation and management of the marine environment. {ref. FSA Art 8(l)}
2. In the implementation of this agreement, the Parties shall draw upon the advice of the appropriate international organisations. {ref. CBD Art 5}
3. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the objectives of this agreement are threatened. To this end, consultations may be initiated at the request of any interested State Party with a view to establishing appropriate arrangements to ensure conservation and management. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States. {ref. FSA Art 8(2)}
4. Where an oceans management organization has the competence to establish conservation and management measures, States carrying out activities in areas beyond national jurisdiction shall give effect to their duty to co-operate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement.
5. States having a real interest or concern in the concerned area may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States. {ref. FSA Art 8(3)}
6. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the marine

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resources to which those measures apply.{ref. FSA Art 8(4)}

7. Where there is no oceans management organization to establish conservation and management measures, relevant States shall co-operate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management and shall participate in the work of the organization or arrangement. {ref. FSA Art 8(5)}

8. Any State Party intending to propose that action be taken by an intergovernmental organization having competence with respect to marine life should, where such action would have a significant effect on conservation and management measures already established by a competent oceans management organization, consult through that organization with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization. {ref. FSA Art 8(6)}

9. States Parties shall comply, inter alia, with all provisions of Part III of the Fish Stocks Agreement, *mutatis mutandis*.

### **Article 13 Reporting**

{ref Madrid Protocol Art 17}

1. Each Party shall report annually on the steps taken to implement this Agreement. Such reports shall include notifications made in accordance with Article 24, contingency plans established in accordance with Article 24 and any other notifications and information called for pursuant to this Agreement for which there is no other provision concerning the circulation and exchange of information.

2. States Parties shall report annually on the status and the state of Marine Protected Areas.

3. Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Governing Body, considered at the next [Governing Body] Meeting, and made publicly available.

### **Article 14 Transparency**

{ref. Aarhus Art 3}

1. Each State Party shall take the necessary legislative, regulatory and other measures, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Agreement.

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2. Each State Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in matters relevant to this Agreement.
3. Each State Party shall promote environmental education and environmental awareness among the public on matters relevant to this Agreement.
4. Each State Party shall ensure that public authorities, in response to a request for environmental information arising under this Agreement, make such information available to the public, within the framework of national legislation, including, where requested, copies of the actual documentation containing or comprising such information.

### **Article 15 Oceans Management Organization**

{ref. FSA Art 9}

1. States Parties shall co-operate to establish oceans management organizations with the objective of furthering the objectives of this Agreement.
2. In establishing oceans management organizations States shall agree, *inter alia*, on:
  - (a) the matters to which conservation and management measures apply;
  - (b) the area of application;
  - (c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing management organizations or arrangements; and
  - (d) the mechanisms by which the organization or arrangement will obtain scientific advice including, where appropriate, the establishment of a scientific advisory body.
3. States co-operating in the formation of an oceans management organization shall inform other States which they are aware have an interest or concerning the work of the proposed organization of such co-operation.

### **Article 16 Functions of Oceans Management Organizations**

{ref. FSA Art 10}

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In fulfilling their obligation to co-operate, States shall when establishing, adapting and maintaining oceans management organizations:

- (a) agree on and comply with conservation and management measures to attain the objectives of this Agreement;
- (b) adopt measures to ensure the long-term sustainability of the marine environment; {ref. FSA Art 5(a)}
- (c) apply the precautionary principle in accordance with Article [8];{ref. FSA Art 5(c)}
- (d) apply the ecosystem approach;
- (e) restore and protect biological diversity in the marine environment; {ref. FSA Art 5(g)}
- (f) provide for comprehensive prior environmental assessments and ongoing monitoring of the marine environment according to Part IV;
- (g) provide for the designation of a regional and global representative network of high seas marine protected areas, according to Part V; {ref. JPOI para 32(c)}
- (h) provide for participation in a regime for access to and sharing of benefits derived from marine genetic resources in areas beyond national jurisdiction according to Parts VI and VII;
- (i) implement and enforce conservation and management measures through effective monitoring, control, surveillance, compliance and enforcement. {ref. FSA Art 5(l)}
- (j) agree, as appropriate, on participatory rights;
- (k) adopt and apply any generally recommended international minimum standards for operations;
- (l) agree on standards for collection, reporting, verification and exchange of data;
- (m) compile and disseminate accurate and complete statistical data, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (n) promote and conduct scientific assessments and relevant research and disseminate the results thereof;
- (o) agree on means by which the interests of new members of the organization or new participants in the arrangement will be

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accommodated;

(p) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;

(q) promote the peaceful settlement of disputes in accordance with Part XVII;

(r) ensure the full co-operation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement;

(s) give due publicity to the conservation and management measures established by the organization or arrangement; and

(t) implement the principle of transparency according to Articles [14] and [18].

### **Article 17 New Members or Participants**

{ref. FSA Art 11}

In determining the nature and extent of participatory rights for new members of an oceans management organization or for new participants in an oceans management arrangement, States shall take into account, *inter alia*:

(a) the status of marine life and marine genetic resources and the existing level of impact on the species and resources;

(b) the respective interests and activities of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management, to the collection and provision of accurate data and to the conduct of scientific research;

(d) the needs of any affected coastal States and

(e) the interests of affected developing States.

### **Article 18 Transparency in Activities of Oceans Management Organizations**

{ref. FSA Art 12}

1. States shall provide for transparency in the decision-making process and other activities of oceans management organizations.

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2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned shall be afforded the opportunity to take part in meetings of oceans management organizations as observers or otherwise, as appropriate, in accordance with the procedures of the organization concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations, subject to the procedural rules on access to them.

### **Article 19 Strengthening and Adaptation of Existing Organizations and Arrangements**

{ref. FSA Art 13}

States shall co-operate to strengthen and adapt existing fisheries management organizations to become oceans management organizations to carry out the functions provided in Article [16] in order to implement this Agreement.

### **Article 20 Collection and Provision of Information and Co-Operation in Scientific Research**

{ref. FSA Art 14}

1. States shall ensure that vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall:

- (a) collect and exchange scientific, technical and statistical data with respect to areas beyond national jurisdiction.;
- (b) ensure that data are collected in sufficient detail to facilitate effective assessment and evaluation and are provided in a timely manner to fulfil the requirements of oceans management organizations; and
- (c) take appropriate measures to verify the accuracy of such data.

2. States shall co-operate either directly or through oceans management organizations to:

- (a) agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, and
- (b) develop and share analytical techniques and assessment methodologies to improve measures to attain the objectives of this Agreement.

3. Consistent with Part XIII of the Law of the Sea Convention, States shall co-operate, either directly or through competent international organizations, to strengthen scientific research capacity and promote scientific research for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall

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actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

### **Article 21 Enclosed and Semi-Enclosed Seas**

{ref. FSA Art 15}

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

### **Article 22 Areas of High Seas Surrounded Entirely by an Area Under The National Jurisdiction of a Single State**

{ref. FSA Art 16}

1. States carrying out activities in an area beyond national jurisdiction surrounded entirely by an area under the national jurisdiction of a single State and another State shall co-operate to establish conservation and management measures. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same matters in accordance with Article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures.

2. States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of operations in the area referred to in paragraph 1.

If, within a reasonable period of time, the States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply Article [7], relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag and their nationals in order that they not engage in activities which could undermine the objectives of this Agreement.

## **PART IV ENVIRONMENTAL IMPACT ASSESSMENTS AND EMERGENCY RESPONSE**

## **Article 23 Environmental Impact Assessment**

{ref. Madrid Protocol Art 8}

1. Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any Specified Activities proposed or intended to be undertaken in any area beyond national jurisdiction. for prior assessment of the impacts of those activities on the areas beyond national jurisdiction or on marine life according to whether those activities are identified as having:

- (a) less than a minor or transitory impact;
- (b) a minor or transitory impact; or
- (c) more than a minor or transitory impact.

2. The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.

3. Where activities are planned jointly by more than one State Party, the States Parties involved shall nominate one of their number to coordinate the implementation of the environmental impact assessment procedures set out in Annex I. {ref. CBD Art 14}

## **Article 24 Emergency Response**

{ref. Madrid Protocol Art 15}

1. Each State Party shall provide for prompt and effective response action to threat or imminent or grave danger or damage to the marine environment or to marine life in areas beyond national jurisdiction caused by or related to any Specified Activities in areas beyond national jurisdiction.

2. Each State Party shall take appropriate action to prevent or minimize such danger or damage.

3. Each State Party shall notify immediately Governing Body of any such threat or imminent or grave danger or damage.

4. Each State Party shall establish contingency plans for response to incidents caused by or involving by their nationals or vessels flagged to them or otherwise conducted under their jurisdiction or control with potential adverse effects on areas beyond national jurisdiction or to marine life the marine environment in such areas.

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5. Each State Party shall

- (a) co-operate in the formulation and implementation of such contingency plans;
- (b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies; and
- (c) where appropriate, co-operate to establish joint contingency plans.

### **Article 25 Minimizing Adverse Impacts**

{ref. Madrid Protocol Art 3}

1. Activities in areas beyond national jurisdiction shall be planned and conducted so as to limit adverse impacts on the marine environment in the areas, including on marine life and marine genetic resources.

2. These activities in areas beyond national jurisdiction shall be planned and conducted so as to avoid:

- [(a) adverse effects on climate or weather patterns;]
- (b) significant adverse effects [on air or] water quality;
- (c) significant changes[ in the atmospheric] or marine environments;
- (d) detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora;
- (e) further jeopardy to endangered or threatened species or populations of such species; or
- (f) degradation of, or substantial risk to, areas of biological, scientific, or aesthetic significance.

3. Activities in areas beyond national jurisdiction shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the area and its marine life and on the value of the areas for the conduct of scientific research; such judgments shall take account of:

- (a) the scope of the activity, including its area, duration and intensity;
- (b) the cumulative impacts of the activity, both by itself and in combination with other activities in the area;
- (c) whether the activity will detrimentally affect any other activity in the area;

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- (d) whether technology and procedures are available to provide for environmentally safe operations;
  - (e) whether there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify and provide early warning of any adverse effects of the activity and to provide for such modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the marine environment and marine life and
  - (f) whether there exists the capacity to respond promptly and effectively to accidents, particularly those with potential environmental effects.
4. Regular and effective monitoring shall take place of all assessment of the impacts of ongoing activities, including the verification of predicted impacts.
  5. Regular and effective monitoring shall take place to facilitate early detection of the possible unforeseen effects of activities carried on both within and outside the area or on its marine life.
  6. Activities undertaken in the area pursuant to scientific research programs, and all other activities in the area shall:
    - (a) take place in a manner consistent with the principles in this Article; and
    - (b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the area or its marine life inconsistent with those principles.

### **Article 26 Liability and Redress**

[Need to add provisions as from Madrid Protocol]

## **PART V MARINE PROTECTED AREAS**

### **Article 27 Objectives of Marine Protected Areas**

{ref. SPA Protocol Art 4}

1. In order to promote cooperation in the management and conservation of areas beyond national jurisdiction, as well as in the protection of marine life, ecosystems and biological diversity and the marine environment, it shall be a priority of the Parties to establish representative networks of marine protected areas in order to:

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- (a) afford protection to diverse types of habitat and/or ecosystem types,
- (b) conserve and sustain multiple species of resources which may have different distributions and patterns of dispersal, and
- (c) account for dispersal of early life history stages of marine life or movement of later life stages. {ref. COFI workshop para 6}  
{ref.WSSD para 31}

2. The objective of a representative network of marine protected areas is to protect and conserve:

- (a) representative types of marine ecosystems of adequate size to ensure their long-term viability and to maintain their biological diversity;
- (b) habitats which are in danger of disappearing in their natural area of distribution or which have a reduced natural area of distribution as a consequence of their regression or on account of their intrinsically restricted area;
- (c) habitats critical to the survival, reproduction and recovery of endangered, threatened or endemic species of flora or fauna;
- (d) sites of particular importance because of their scientific, educational or public interest.

### **Article 28 Establishment of Marine Protected Areas**

{ref. SPA Protocol Art 8} { ref. World Heritage Convention 'outstanding universal value'}

1. The States Parties shall draw up a list of Marine Protected Areas which are:

- (a) of importance for conserving marine genetic resources;
- (b) unique or unusual ecosystems or the habitats of endangered species;
- (c) of special scientific, educational or public interest;
- (d) of outstanding universal value;
- (e) beneficial to achieve the purposes of this Agreement; or
- (f) part of a network of marine protected areas which is or is to be established.

2. Proposals for inclusion in the list may be submitted by any State Party.

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3. Parties making proposals for inclusion in the list shall provide the Governing Body with an introductory report containing information on the area including:

- (a) its geographical location,
- (b) its physical and ecological characteristics,
- (c) its proposed management plans and the means for their implementation, and
- (d) a statement justifying the importance of the area.

4. The States Parties agree:

- (a) to recognize the particular importance of the Marine Protected Areas;
- (b) to comply with the measures applicable to the Marine Protected Areas and not to authorize nor undertake any activities that might be contrary to the objectives for which the Marine Protected Areas were established.

5. Changes in the delimitation or conditions of a Marine Protected Area shall not be decided upon unless there are important reasons for doing so, taking into account the need to safeguard the environment and comply with the obligations laid down in this Agreement and a procedure similar to that followed for the creation of the Marine Protected Area and its inclusion in the list shall be observed.

### **Article 29 Guidelines and Common Criteria**

{ref. SPA Protocol Art 16}

The States Parties shall adopt:

- (a) common criteria for the choice of marine protected areas that could be included in the list which shall be annexed to this Agreement;
- (b) guidelines for the establishment and management of marine protected areas;
- (c) other guidelines and criteria conducive to achieving the purposes of this Agreement which may be adopted from time to time.

The criteria and guidelines may be amended by the Governing Body on the basis of a proposal made by one or more Parties.

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### **Article 30 Planning and Management**

{ref. SPA Protocol Art 7}

1. The Parties shall, in accordance with international law, adopt planning, management, supervision and monitoring measures for the marine protected areas.
2. Such measures should include for each marine protected area:
  - (a) the development and adoption of a management plan that specifies the legal and institutional framework and the management and protection measures applicable;
  - (b) the continuous monitoring of ecological processes, habitats, population dynamics, landscapes, as well as the impact of human activities;
  - (c) the adoption of mechanisms for financing the promotion and management of marine protected areas;
  - (d) the development of activities which ensure that management is compatible with the objectives of marine protected areas;
  - (e) the regulation of activities compatible with the objectives for which the marine protected area was established and the terms of the related permits;
  - (f) the training of managers and qualified technical personnel, as well as the development of an appropriate infrastructure; and
  - (g) contingency plans for responding to incidents that could cause damage or constitute a threat to the marine protected areas.

### **Article 31 Protection Measures**

{ref. SPA Protocol Art 6}

1. The States Parties, in conformity with international law and taking into account the characteristics of each marine protected area, shall take the necessary measures including:
  - (a) the strengthening of the application of other relevant treaties to which they are Parties; and
  - (b) other measures.

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2. The States Parties shall take necessary protection measures in their national laws and with respect to their nationals and vessels, in particular:

(a) the prohibition of the dumping or discharge of wastes and other substances likely directly or indirectly to impair the integrity of the marine protected area;

(b) the regulation of the passage of ships and any stopping or anchoring;

(c) the regulation of the introduction of any species not indigenous to the marine protected area in question, or of genetically modified species, as well as the introduction or reintroduction of species which are or have been present in the marine protected area;

(d) the regulation or prohibition of any activity involving the exploration or modification of the soil or the exploitation of the subsoil of the seabed or its subsoil;

(e) the regulation of any scientific research activity;

(f) the prohibition of fishing, hunting, taking of samples of marine life or marine genetic resources for commercial purposes, taking of animals and harvesting of marine genetic resources or their destruction, as well as trade in animals, parts of animals, plants, parts of plants, which are situated in the marine protected areas;

(g) the regulation and if necessary the prohibition of any other activity or act likely to harm or disturb the species or that might endanger the state of conservation of the ecosystems or species or any activity that might impair the natural or cultural characteristics of the marine protected area;

(i) any other measure aimed at safeguarding ecological and biological processes.

### **Article 32 Measures for the Protection and Conservation of Species**

When the range area of a species [relevant to the purposes for which a Marine Protected Area was established or which is an important component of the Marine Protected Area] extends beyond the Marine Protected Area, States Parties shall co-operate with a view to ensuring the protection and conservation and, if necessary, the recovery of such species, and shall observe any conservation and management measures agreed for such species.

## **PART VI ACCESS TO MARINE GENETIC RESOURCES**

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[ Multilateral System for Access to Marine Genetic resources{ref. ITPGR Multilateral System}]

### **Article 33 Identification and Monitoring**

{ref. CBD Art 7}

Each State Party shall, as far as possible:

- (a) identify marine genetic resources;
- (b) monitor, through sampling and other techniques, marine genetic resources identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures;
- (c) identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of marine genetic resources, and monitor their effects through sampling and other techniques; and
- (d) maintain and organize, by any mechanism, data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

### **Article 34 Access to Marine Genetic Resources**

1. Each State Party shall take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of marine genetic resources with the other States Parties. Such sharing shall be upon mutually agreed terms.] { ref cbd Article 15.}
2. Each State Party shall, subject to national legislation, and in co-operation with other States Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of marine genetic resources {IPGR Art 5} and in particular shall: {adapted from IPGR Art 5(1)} {and ref CBD Art 8}
  - (a) Promote the collection of marine genetic resources and relevant associated information on those marine genetic resources that are under threat or are of potential use;
  - [(b) Promote or support, as appropriate, fishing and local communities' efforts to manage and conserve marine genetic resources;]
  - (c) Promote *in situ* conservation of marine genetic resources, including in protected areas;
  - (d) Co-operate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation; and

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- (e) monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of marine genetic resources {ref. ITPGR Art 5(1)(f)}

### **Article 35 Sustainable Use of Marine Genetic Resources**

{ref. CBD Art 10}

1. The States Parties shall:

- (a) integrate consideration of the conservation and sustainable use of marine genetic resources into national decision-making;
- (b) adopt measures relating to the use of marine genetic resources to avoid or minimize adverse impacts on marine life and biological diversity;
- (c) encourage co-operation between its governmental authorities and its private sector in developing methods for sustainable use of marine genetic resources;
- (d) develop and maintain appropriate policy and legal measures that promote the sustainable use of marine genetic resources; and {ref. ITPGR Art 6}
- (e) pursue fishery and aquaculture policies that promote the development and maintenance of systems that enhance the sustainable use of marine life and ecosystems.

### **Article 36 Access to and Transfer of Technology for Marine Genetic Resources**

{ref. IGPR Art 13} {ref. CBD Art 16}

1. The States Parties undertake to provide and/or facilitate access to technologies which do not cause significant damage to the environment. for the conservation, characterization, evaluation and use of marine genetic resources [which are under the Multilateral System].The States Parties shall provide and/or facilitate access to such technologies. Access to these technologies shall be provided and/or facilitated, while respecting applicable property rights and access laws, and in accordance with national capabilities.

2. Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through:

- (a) a set of measures, such as the establishment and maintenance of, and participation in, thematic groups on utilization of

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marine genetic resources,

(b) all types of partnership in research and development and in commercial joint ventures relating to the material received, human resource development, and effective access to research facilities.

3. Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing countries that are States Parties, in particular least developed countries, and countries with economies in transition, shall be provided and/or facilitated under fair and most favourable terms, in particular in the case of technologies for use in the conservation or marine genetic resources, including on concessional and preferential terms [where mutually agreed, *inter alia*, through partnerships in research and development under the Multilateral System.]

4. Each State Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology under this Article for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above. The States Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Agreement, shall co-operate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives. Subject to the above, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.

## **PART VII EDUCATION, TECHNICAL ASSISTANCE AND BENEFIT SHARING**

### **Article 37 Research and Training**

{ref. CBD Art 12}

States Parties, taking into account the special needs of developing countries, shall:

(a) establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of marine life and provide support for such education and training for the specific needs of developing countries;

(b) promote and encourage research which contributes to the conservation and sustainable use of marine life, particularly in developing countries; and

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(c) promote and co-operate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of marine life.

### **Article 38 Public Education and Awareness**

{ref. CBD Art 13}

States Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of marine life and protection of the marine environment, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Co-operate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of marine life and protection of the marine environment.

### **Article 39 Exchange of Information**

{ref. ITPGR Art 13}

States Parties agree to make available information which shall, *inter alia*, encompass catalogues and inventories, information on technologies, results of technical, scientific and socio-economic research, including characterization, evaluation and utilization, regarding the marine life in areas beyond national jurisdiction. Such information shall be made available, subject to applicable law and in accordance with national capabilities and confidentiality requirements. Such information shall be made available to all States Parties through the information system, provided for in Article [].

### **Article 40 Technical and Scientific Co-operation on Marine Genetic Resources**

{ref. CBD Art 18}

1. The States Parties shall promote international technical and scientific co-operation in the field of conservation and sustainable use of marine genetic resources, where necessary, through the appropriate international and national institutions.
2. Each State Party shall promote technical and scientific co-operation with other States Parties, in particular developing countries, in implementing this Agreement, *inter alia*, through the development and implementation of national policies. In promoting such co-operation, special attention should be given to the development and strengthening of national capabilities, by

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means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific co-operation.
4. States Parties shall, in accordance with national legislation and policies, encourage and develop methods of co-operation for the development and use of technologies in pursuance of the objectives of this Agreement. For this purpose, States Parties shall also promote co-operation in the training of personnel and exchange of experts.
5. States Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Agreement.

### **Article 41 Sharing of Monetary and Other Benefits from the Commercialization of Marine Genetic Resources**

{ref. ITPGR Art 13}

1. States Parties agree[, under the Multilateral System,] to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and through collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development.
2. States Parties agree that any [query refer to a standard] Material Transfer Agreement shall include a requirement that a recipient who commercializes a product that incorporates marine genetic resource material [accessed from the Multilateral System,] shall pay to the mechanism [referred to in Article], an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercializes shall be encouraged to make such payment.
3. The Governing Body shall, at its [first] meeting, determine the level, form and manner of the payment, in line with commercial practice. The Governing Body may decide to establish different levels of payment for various categories of recipients who commercialize such products; it may also decide on the need to exempt payments for licencees in developing countries and in countries with economies in transition. The [Body] may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits, and it may also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the [mechanism]]shall apply also in cases where such commercialized products are available without restriction to further research and breeding.

## **PART VIII MARINE SCIENTIFIC RESEARCH**

### **Article 42 Marine Scientific Research**

{ref. SPA Protocol Art 20}

1. All marine scientific research in areas beyond national jurisdiction shall be conducted according to this Agreement and the Convention. {ref. UNCLOS Art 240}
2. States Parties shall encourage and develop marine scientific and technical research relating to the aims of this Agreement.
3. They shall also encourage and develop research into conservation and protection of the marine protected areas.
4. States Parties shall consult, when necessary, among themselves and with competent international organizations with a view to identifying, planning and undertaking scientific and technical research and monitoring programmes necessary for the identification and monitoring of marine protected areas [and species] and assessing the effectiveness of measures taken to implement management and recovery plans.
5. States Parties shall exchange, directly or through the Governing Body, scientific and technical information concerning current and planned research and monitoring programmes and the results thereof. They shall, to the fullest extent possible, coordinate their research and monitoring programmes, and endeavour jointly to define or standardize their procedures.

## **PART IX NON-MEMBERS AND NON-PARTICIPANTS**

### **Article 43 Non-Members of Organizations and Non-Participants in Arrangements**

1. A State which is not a member of an oceans management organization and not a participant in an oceans management arrangement, and does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to co-operate, in accordance with the Convention and this Agreement, in achieving the objectives of this Agreement, and is not discharged from the requirements of this Agreement.
2. Such a State shall not authorize vessels flying its flag to engage in operations in areas beyond national jurisdiction which are subject to the conservation and management measures established by such an organization or arrangement.

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3. States which are members of such organization or participants in such an arrangement shall exchange information with respect to the activities of nationals or vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in operations in the relevant area. They shall take measures consistent with this Agreement and international law to prevent, deter and eliminate the activities of such nationals or vessels which undermine the effectiveness of conservation and management measures.

## **PART X PROTECTION OF MARINE GENETIC RESOURCES AND THE ENVIRONMENT**

### **Article 44 Introduction of Non-Indigenous or Genetically Modified Species**

{ref. SPA Protocol Art 13}

1. States Parties shall take all appropriate measures to regulate the intentional or accidental introduction of non-indigenous or genetically modified species or foreign substances to the areas beyond national jurisdiction and prohibit those that may have harmful impacts on the ecosystems, habitats or marine life in such areas.

2. States Parties shall endeavour to implement all possible measures to eradicate species that have already been introduced into areas beyond national jurisdiction when, after scientific assessment, taking into account the precautionary principle, it appears that such species caused or are likely to cause damage to ecosystems, habitats or species in the area.

## **PART XI MONITORING, CONTROL, SURVEILLANCE, COMPLIANCE AND ENFORCEMENT**

### **Article 45 Monitoring**

1. The information listed in Annex IV should be collected and maintained by each State Party in order to facilitate MCSCE:2. States Parties shall ensure that all vessels flying their flag shall carry vessel monitoring systems and observers according to requirements in Annex IV, and Article 46 and according to any monitoring and control provisions established by oceans management organizations or regional fisheries management organizations.

### **Article 46 Duties of the Flag State**

{ref. FSA Art 18}

1. A State whose vessels undertake operations in areas beyond national jurisdiction shall take such measures as may be

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necessary to ensure that vessels flying its flag comply with conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for operations on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Law of the Sea Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:

(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) to prohibit operations in areas beyond national jurisdiction by vessels which are not duly licensed or authorized, or operations on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

(iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

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

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection

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schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, *inter alia*:

(i) the implementation of national inspection schemes and subregional and regional schemes for co-operation in enforcement pursuant to Articles [FSA 21 and 22], including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

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

### **Article 47 Duties of All States**

All States Parties and regional entities shall ensure compliance with this Agreement and with international conservation and management measures by all nationals. To this end, all States Parties shall:

1. Take legislative, administrative or policy measures, as appropriate, with the aim of ensuring compliance by their nationals, including, where appropriate, making the contravention of provisions of this Agreement or of undermining international conservation and management measures an offence under national legislation and taking all appropriate steps to discourage nationals from participating in activities in breach of this Agreement.

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2. Ensure that sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. {ref. FAO Compliance Agreement Art III}

### **Article 48 International Cooperation**

1. States shall co-operate, either directly or through oceans management organizations, to ensure compliance with and enforcement of international conservation and management measures. {ref FSA Art 20}

2. States shall, in particular, exchange information, including evidentiary material, to assist other States to promote and enforce compliance with this Agreement and with conservation management measures implemented under this Agreement. {ref. FAO Compliance Agreement}

3. When a vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the vessel has been used for an activity that undermines the effectiveness of international conservation and management measures or of this Agreement, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the vessel has indeed been used contrary to the provisions of this Agreement. {ref. FAO Compliance Agreement Art V}

4. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement. {ref. FAO Compliance Agreement Art V}

5. A flag State conducting an investigation of an alleged violation of conservation and management measures may request the assistance of any other State whose co-operation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations. {ref. FSA Art 20}

6. A flag State may undertake such investigations directly, in co-operation with other interested States or through the relevant oceans management organization. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation. {ref. FSA Art 20}

7. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of international conservation and management measures. {ref. FSA Art 20}

8. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to

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prosecuting authorities in other States evidence relating to alleged violations of such measures. {ref. FSA Art 20}

9. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in an activity in breach of this Agreement, the flag State of that vessel, at the request of any State Party, shall immediately and fully investigate the matter. The flag State shall co-operate with the Governing Body and other States Parties in taking appropriate enforcement action in such cases and shall co-operate with States Parties which [shall] [may] [at the request of the flag State] [Governing Body] undertake such boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with this Agreement. {ref. FSA Art 20}

10. States Parties which are members of an oceans management organization or participants in an oceans management arrangement may take action in accordance with international law, including through recourse to subregional, regional or global procedures established for this purpose, to investigate and deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from undertaking activities in the area beyond national jurisdiction in the subregion or region until such time as appropriate action is taken by the flag State.

### **Article 49 Compliance and Enforcement by the Flag State**

{ref. FSA Art 19}

1. A State shall ensure compliance by vessels flying its flag with conservation and management measures and this Agreement. To this end, that State shall:

- (a) enforce such measures irrespective of where violations occur;
- (b) investigate immediately and fully any alleged violation of international conservation and management measures, which may include the physical inspection of the vessels concerned, take appropriate action and report promptly to the State alleging the violation and the relevant organization on the progress and outcome of the investigation;
- (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, operational or fishing gear, fishing or other operations and related activities in the area of an alleged violation;
- (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and
- (e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a

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serious violation of such measures, the vessel does not engage in operations in areas beyond national jurisdiction until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

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

### **Article 50 Global, Subregional and Regional Co-operation in Enforcement**

1. In any area covered by an oceans management organization a State Party [which is a member of such organization] may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization, for the purpose of ensuring compliance with international conservation and management measures. {ref. FSA Art 21}2. Unless otherwise decided by the, these procedures shall also apply in their entirety as between a State Party and a Fishing Entity, subject to a notification to that effect to the Governing Body from the State Party concerned. {ref. WCPFC Boarding and Inspection Regime 6}

3. States shall establish, through oceans management organizations, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this Article. Such procedures shall be consistent with this Article and the basic procedures set out in Article [51] and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

4. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in Article [51][in accordance with Annex II]. {ref. FSA Art 22}

5. Prior to taking action under this Article, inspecting States shall, either directly or through the relevant oceans management organization, inform all States whose vessels undertake activities in the area beyond national jurisdiction of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this Article and shall give due publicity of such designation through the

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relevant oceans management organization.

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

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

(a) fulfil, without delay, its obligations under Article [49 {ref. FSA 19 Compliance and Enforcement by flag state}] to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly and regularly inform the inspecting State of the results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

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

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

10. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

11. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with operations and, to the extent practicable, avoid action which would adversely affect the quality of any catch on board. The inspecting State shall ensure that boarding and

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inspection is not conducted in a manner that would constitute harassment of any vessel.

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

- (a) undertaking a specific activity contrary to this Agreement, including without the performance of an environmental impact assessment;
- (b) fishing without a valid licence, authorization or permit issued by the flag State in accordance with Article [{ref. FSA 18, paragraph 3 (a)}];
- (c) failing to maintain accurate records of catch and catch-related data, as required by the relevant oceans management organization, or serious misreporting of data or catch, contrary to the reporting requirements of such organization;
- (d) undertaking any activity including taking samples or fishing in a marine protected area or a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant oceans management organization;
- (e) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (f) using prohibited fishing gear or using gear in contravention of international conservation and management measures;
- (g) falsifying or concealing the markings, identity or registration of a vessel;
- (h) concealing, tampering with or disposing of evidence relating to an investigation;
- (i) engaging in any Specified Activity in breach of Article 7 [Activities in Areas Beyond National Jurisdiction]
- (j) multiple violations which together constitute a serious disregard of international conservation and management measures;
- (k) engaging in transshipment at sea in violation of this Agreement or that of an oceans management organisation or arrangement;  
or
- (l) such other violations as may be specified in procedures established by the oceans management organization.

13. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under Article [49 ] { ref. FSA 19} with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

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

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

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

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

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

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

### **Article 51 Basic Procedures for Boarding and Inspection**

{ref. FSA Art 21}

1. The inspecting State shall ensure that its duly authorized inspectors:

(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the area in question pursuant to those measures;

(b) initiate notice to the flag State at the time of the boarding and inspection;

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- (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
  - (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
  - (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
  - (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, any fish or fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
3. The flag State shall ensure that vessel masters:
- (a) accept and facilitate prompt and safe boarding by the inspectors;
  - (b) co-operate with and assist in the inspection of the vessel conducted pursuant to these procedures;
  - (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
  - (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
  - (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
  - (f) facilitate safe disembarkation by the inspectors.
4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and Article [ ] {ref. FSA Art 21}, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the

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inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

### **Article 52 Measures Taken by a Port State**

{ref. FSA Art 21}

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.
2. A port State may, *inter alia*, inspect documents, operational and fishing gear and catch, samples or other matter taken from an area beyond national jurisdiction on board vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
3. States may adopt regulations empowering the relevant national authorities to prohibit entry of vessels, bunkering, landings and transshipments where it has been established that the vessel has been operating in a manner which undermines the effectiveness of conservation and management measures in areas beyond national jurisdiction or contrary to this Agreement.
4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

## **PART XII REQUIREMENTS OF DEVELOPING STATES**

### **Article 53 Recognition of the Special Requirements of Developing States**

{ref. FSA Art 24}

1. States shall give full recognition to the special requirements of developing States in relation to the application of this Agreement. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations, other specialized United Nations Agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.
2. In giving effect to the duty to co-operate under this Agreement, States shall take into account the special requirements of developing States, in particular:
  - (a) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and

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women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

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

### **Article 54 Forms of Co-operation with Developing States**

{ref. FSA Art 25}

1. States shall co-operate, either directly or through oceans management organizations to:

(a) assist and enhance the ability of developing States, in particular the least-developed among them and small island developing States, to undertake or participate in activities in areas beyond national jurisdiction; and

(b) facilitate the participation of developing States in oceans management organizations.

2. Co-operation with developing States for the purposes set out in this Article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

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

(a) improved conservation and management of high seas fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement,

including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

### **Article 55 Special Assistance in the Implementation of this Agreement**

{ref. FSA Art 26}

1. States shall co-operate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they

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may be parties.

2. States and international organizations should assist developing States in establishing new oceans management organizations or arrangements, or in strengthening existing organizations or arrangements or in becoming members of such organizations or arrangements.

### **Article 56 Provisional Measures**

{ref. FSA Art 31}

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to Article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in Article 7, paragraph 5, and Article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding Article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

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## **Article 57 Limitations on Applicability of Procedures for the Settlement of Disputes**

{ref. FSA Art 32}

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

## **PART XIII NON-PARTIES TO THIS AGREEMENT**

### **Article 58 Non-parties to this Agreement**

{ref. FSA Art 33}

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

## **PART XIV GOOD FAITH AND ABUSE OF RIGHTS**

### **Article 59 Good Faith and Abuse of Rights**

{ref. FSA Art 34}

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

## **PART XV RESPONSIBILITY AND LIABILITY**

### **Article 60 Responsibility and Liability**

{ref. FSA Art 35}

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

## **PART XVI REVIEW CONFERENCE**

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### **Article 61 Review Conference**

{ref. FSA Art 36}

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a [conference] [Governing Body] with a view to assessing the effectiveness of this Agreement in attaining the objective of this Agreement. The Secretary-General shall invite to the [conference] [Governing Body] all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.
2. The [conference] [Governing Body] shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in attaining the objective of this agreement.

## **PART XVII INSTITUTIONAL PROVISIONS**

### **Article 62 Governing Body**

{ref. ITPGR Art 19}

1. A Governing Body for this Treaty is hereby established, composed of all States Parties.
2. The functions of the Governing Body shall be to promote the implementation of this Agreement, keeping in view its objectives. In particular, it shall:
  - (a) elect at each regular session its Chair and two Vice-Chairs who shall hold office until the next regular session;
  - (b) elect every 4 years an Executive Secretary;
  - (c) provide policy direction and guidance to monitor, and adopt such recommendations as necessary for the implementation of this Agreement
  - (d) adopt plans and programmes for the implementation of this Agreement including through the establishment of a Secretariat;
  - [(e) adopt, at its first session, and periodically review the funding strategy for the implementation of this Agreement, ]

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- (f) adopt the budget of this Agreement and fix the annual contributions;
  - (g) appoint auditors and approve the accounts of the Fund;
  - (h) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;
  - (i) establish, as needed, an appropriate mechanism, such as a Trust Account, for receiving and utilizing financial resources that will accrue to it for purposes of implementing this Agreement;
  - (j) establish and maintain co-operation with other relevant international organizations and treaty bodies, on matters covered by this Agreement, including their participation in the funding strategy;
  - (k) consider and adopt, as required, amendments to this Agreement, in accordance with the provisions of Article [];
  - (l) consider and adopt, as required, amendments to annexes to this Agreement, in accordance with the provisions of Article [];
  - (m) determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Governing Body and subsidiary bodies;
  - (n) provide advice and formulate recommendations to the Parties in connection with the implementation of this Agreement, including the operation of its Annexes; and
  - (o) perform such other functions as may be necessary for the fulfilment of the objectives of this Agreement.
3. The Governing Body shall adopt and amend, as required, its own Rules of Procedure and financial rules which shall not be inconsistent with this Agreement.
  4. The presence of delegates representing a majority of the States Parties shall be necessary to constitute a quorum at any session of the Governing Body.
  4. The Governing Body shall hold regular sessions at least once every two years.
  5. Special Sessions of the Governing Body shall be held at such other times as may be deemed necessary by the Governing Body, or at the written request of any State Party, provided that this request is supported by at least one third of the States Parties.
  6. Sessions may be held by video conference or similar means as appropriate.

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7. The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), in conformity with its Rules of Procedure.

### **Article 63 Secretariat**

{ref. ITPGR Art 20}

1. The Secretary of the Governing Body shall be elected by the Governing Body. The Secretary shall be assisted by such staff as may be required.

2. The Secretary shall perform the following functions:

(a) arrange for and provide administrative support for sessions of the Governing Body and for any subsidiary bodies as may be established;

(b) assist the Governing Body in carrying out its functions, including the performance of specific tasks that the Governing Body may decide to assign to it;

(c) report on its activities to the Governing Body.

3. The Secretary shall communicate to all States Parties:

(a) decisions of the Governing Body within sixty days of adoption;

(b) information received from States Parties in accordance with the provisions of this Agreement.

4. [The Secretary shall provide documentation in the six languages of the United Nations for sessions of the Governing Body.]

5. The Secretary shall co-operate with other organizations and treaty bodies, including in particular the Division of Oceans and the Law of the Sea and the Secretariat of the Convention on Biological Diversity, in achieving the objectives of this Agreement.

## **PART XVII PEACEFUL SETTLEMENT OF DISPUTES**

### **Article 64 Obligation to Settle Disputes by Peaceful Means**

{ref. FSA Art 27}

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or

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arrangements, or other peaceful means of their own choice.

### **Article 65 Prevention of Disputes**

{ref. FSA Art 28}

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

### **Article 66 Disputes of a Technical Nature**

{ref. FSA Art 29}

1. 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.
2. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

### **Article 67 Procedures for the Settlement of Disputes**

{ref. FSA Art 23}

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of an oceans agreement relating to areas beyond national jurisdiction or to which they are parties, whether or not they are Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to Article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to Article 287 for the settlement of disputes under this Part.

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4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, Article 2, Annex VII, article 2, and Annex VIII, Article 2, to the Convention for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant oceans management organization, as well as generally accepted standards for the conservation and management of marine life and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the high seas fish stocks concerned.

### **Article 68 Obligation to Exchange Views**

1. When a dispute arises between States Parties concerning the interpretation or application of this Agreement, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

2. The parties shall proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

### **Article 69 Conciliation**

1. A State Party which is a party to a dispute concerning the interpretation or application of this Agreement may invite the other party or parties to submit the dispute to conciliation under Annex II to the Law of the Sea Convention.

2. If the invitation offered pursuant to paragraph 1 is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.

3. If the invitation offered pursuant to paragraph 1 is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. When a dispute has been submitted to conciliation, unless the parties otherwise agree, the proceedings may be terminated only in accordance with the agreed conciliation procedure.

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## **SECTION 2. COMPULSORY PROCEDURES ENTAILING BINDING DECISIONS**

### **Article 70 Application of Procedures under this Section**

Subject to Section 3 of this Part, any dispute concerning the interpretation or application of this Agreement shall, where no settlement has been reached by recourse to Section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

### **Article 71 Choice of Procedure**

1. When signing, ratifying or acceding to this Agreement or at any time thereafter, a State Party shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Agreement:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex III to the Law of the Sea Convention.
- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex IV to the Convention;
- (d) a special arbitral tribunal constituted in accordance with Annex IV to the Convention for one or more of the categories of disputes specified therein.

2. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted the International Tribunal for the Law of the Sea in accordance with Annex III to the Convention.

3. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

4. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to the International Tribunal for the Law of the Sea in accordance with Annex III to the Convention, unless the parties otherwise agree.

5. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

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6. A new declaration, a notice of revocation or the expiry of a declaration does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.

7. Declarations and notices referred to in this Article shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the States Parties.

### **ARTICLE 72 JURISDICTION**

1. A court or tribunal referred to in Article 71 shall have jurisdiction over any dispute concerning the interpretation or application of this Agreement which is submitted to it in accordance with this Part.

2. A court or tribunal referred to in Article 71 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Agreement, which is submitted to it in accordance with the agreement.

3. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

### **Article 73 Experts**

In any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under this section may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts chosen preferably from the relevant list prepared in accordance with Annex V of the Convention, to sit with the court or tribunal but without the right to vote.

### **ARTICLE 74 PROVISIONAL MEASURES**

1. If a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the environment, pending the final decision.

2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.

3. Provisional measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute

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and after the parties have been given an opportunity to be heard.

4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.

5. Pending the constitution of an arbitral tribunal to which a dispute is being submitted under this section, any court or tribunal agreed upon by the parties or, failing such agreement within two weeks from the date of the request for provisional measures, the International Tribunal for the Law of the Sea may prescribe, modify or revoke provisional measures in accordance with this Article if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm those provisional measures, acting in conformity with paragraphs 1 to 4.

6. The parties to the dispute shall comply promptly with any provisional measures prescribed under this Article.

### **Article 75 Access**

1. All the dispute settlement procedures specified in this Part shall be open to States Parties.

2. The dispute settlement procedures specified in this Part shall be open to entities other than States Parties as specifically provided for in this Agreement or as provided in Rules passed by the Assembly under Article []

### **Article 76 Applicable Law**

1. A court or tribunal having jurisdiction under this Section shall apply this Agreement and other rules of international law not incompatible with this Agreement.

2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

### **Article 77 Preliminary Proceedings**

1. A court or tribunal provided for in Article 71 to which an application is made in respect of a dispute referred to in Article 70 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.

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2. Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time limit within which they may request it to make a determination in accordance with paragraph 1.
3. Nothing in this Article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

### **Article 78 Exhaustion of Local Remedies**

Any dispute between States Parties concerning the interpretation or application of this Agreement may be submitted to the procedures provided for in this section only after local remedies have been exhausted, where this is required by international law.

### **Article 79 Finality and Binding Force of Decisions**

1. Any decision rendered by a court or tribunal having jurisdiction under this Section shall be final and shall be complied with by all the parties to the dispute.
2. Any such decision shall have no binding force except between the parties and in respect of that particular dispute.

## **PART XIX FINAL PROVISIONS**

### **Article 80 Signature**

{ref. FSA Art 37}

This Agreement shall be open for signature by all States and the other entities referred to in [{ref. FSA Article 1, paragraph 2(b)}] and shall remain open for signature at United Nations Headquarters for twelve months from the [day] of [month] [20xx].

### **Article 81 Ratification**

{ref. FSA Art 38}

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

### **Article 82 Accession**

{ref. FSA Art 39}

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

### **Article 83 Entry into Force**

{ref. FSA Art 40}

1. This Agreement shall enter into force 30 days after the date of deposit of the [thirtieth] instrument of ratification or accession.
2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the [thirtieth] instrument of ratification or accession, this Agreement shall enter into force on the [thirtieth] day following the deposit of its instrument of ratification or accession.

### **Article 84 Provisional Application**

{ref. FSA Art 41}

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

### **Article 85 Reservations and Exceptions**

{ref. FSA Art 42}

No reservations or exceptions may be made to this Agreement.

### **Article 86 Declarations and Statements**

{ref.FSA Art 43}

Article [{ref. FSA Art 42}] does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the

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legal effect of the provisions of this Agreement in their application to that State or entity.

### **Article 87 Relation to Other Agreements**

{ref. FSA Art 44}

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.
2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.
3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

### **Article 88 Amendment**

{ref. FSA Art 45}

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties.

If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

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

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3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.
4. Articles [{ref. FSA Art 38, 39, 47 and 50}] apply to all amendments to this Agreement.
5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.
6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.
7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:
  - (a) be considered as a Party to this Agreement as so amended; and
  - (b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

### **Article 89 Denunciation**

{ref. FSA Art 46}

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

### **Article 90 Participation by International Organizations**

{ref. FSA Art 47}

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

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international organization in this Agreement, except that the following provisions of that Annex shall not apply:

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

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

(a) at the time of signature or accession, such international organization shall make a declaration stating:

- (i) that it has competence over all the matters governed by this Agreement;
- (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
- (iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization; and

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

### **Article 91 Annexes**

{ref. FSA Art 48}

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

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations, taking into account the precautionary approach.

Notwithstanding the provisions of Article [45 FSA], if a revision to an Annex is adopted by consensus at a meeting of States

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Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in Article 45 shall apply.

### **Article 92 Depositary**

{ref. FSA Art 49}

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

### **Article 93 Authentic Texts**

{ref. FSA Art 50}

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

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

OPENED FOR SIGNATURE at [], this fourth day of [] , two thousand [] , in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

## Annexes

### **Annex I: Annex on Environmental Impact Assessment**

### **Annex II: Common criteria for the choice of marine protected areas**

### **Annex III: High seas boarding and inspection regime**

- {ref. WCPFC}

### **Annex IV: Information to be Collected and Exchanged, Vessel Monitoring Systems, Observers and other MCSCE provisions.**

e.g. from [MCS Network](#)

### **Annex V: Fishing entities**

{ref WCPFC}

1. After the entry into force of this Agreement, any fishing entity whose vessels carry out Specific Activities in any area beyond national jurisdiction, may, by a written instrument delivered to the depositary, agree to be bound by the regime established by this Agreement. Such agreement shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. Such fishing entity shall participate in the work of the Agreement, including decision-making, and shall comply with the obligations under this Agreement. References thereto by the Governing Body or members of the Governing Body include, for the purposes of this Agreement, such fishing entity as well as States Parties.
3. If a dispute concerning the interpretation or application of this Agreement involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.
4. The provisions of this Annex relating to participation by fishing entities are solely for the purposes of this Agreement.