

August 2003

**Second Informal Consultations of the States Parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks  
(New York 23 – 25 July 2003)**

**Report**

**SUMMARY**

This document contains the report of the Second Informal Meeting of the States parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement) which was held in New York, from 23 to 25 July 2003.

The major areas of focus of the meeting were: Review of implementation of the United Nations Fish Stocks Agreement and update on implementation by States parties, including implementation through Regional Fisheries Management Organizations, discussion of the Report of the Secretary -General on the status and implementation of the United Nations Fish Stocks Agreement and its impact on related or proposed instruments throughout the UN system, with special reference to implementation of Part VII of the Agreement dealing with the requirements of developing States; examination of existing arrangements and assistance available to developing States; establishment of the Assistance Fund under Part VII of the Agreement to assist developing States parties and, in particular, preparation of draft terms of reference of the Assistance Fund; facilitation of the involvement of International Financial Institutions in the implementation of the Agreement; consideration of Part II of the Agreement (Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks) containing provisions dealing with general principles, application of the precautionary approach, and compatibility of conservation and management measures; and, finally, adoption of recommendation(s) to the fifty-eighth session of the General Assembly.

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## I. INTRODUCTION

1. Following the entry into force of the UN Fish Stocks Agreement on 11 December 2001, the Secretary-General convened an Informal Meeting of the States parties to the UN Fish Stocks Agreement, which was held in New York, from 30 to 31 July 2002.
2. Subsequently, in its resolution 57/143, para.17 of 12 December 2002, the General Assembly recalled paragraph 6 of its resolution 56/13,<sup>1</sup> and requested the Secretary-General to convene a second round of informal consultations with States that had either ratified or acceded to the Agreement, for the purposes and objectives of considering the national, regional, subregional and global implementation of the Agreement, and making any appropriate recommendation to the General Assembly.
3. In paragraph 15 of resolution 57/143, the Assembly urged States parties to the Agreement to develop detailed terms of reference for the Part VII fund, and requested that the following activities be considered for early implementation through the Part VII fund:
  - (a) Facilitating the participation of developing States parties in relevant regional and subregional fisheries management organizations and arrangements;
  - (b) Assisting with travel costs associated with the participation of developing States parties in meetings of relevant global organizations;
  - (c) Supporting ongoing and future negotiations to establish new regional or subregional fisheries management organizations and arrangements in areas where such bodies are not currently in place, and to strengthen existing subregional and regional fisheries management organizations and arrangements;
  - (d) Building capacity for activities in key areas such as monitoring, control and surveillance, data collection and scientific research;
  - (e) Exchanging information and experience on the implementation of the Agreement;
  - (f) Assisting with human resources development and technical assistance;
4. The Assembly also emphasized the importance of outreach to potential donor organizations to contribute to the programme of assistance (paragraph 16 of resolution 57/143).
5. Finally, in paragraph 19 of resolution 57/143, the Assembly requested the Secretary-General to develop, in consultation with the Food and Agriculture Organization of the United Nations, a voluntary survey to solicit information from States parties and other States that may wish to participate, as well as regional and subregional fisheries management organizations and arrangements, on activities related to the implementation of provisions of the Agreement, similar to the survey currently in use by the Food and Agriculture Organization of the United Nations concerning implementation of the Code of Conduct for Responsible Fisheries, with a view to encouraging through this mechanism a greater exchange of information with regard to implementation of the Agreement, and to include the results of the survey in the report of the Secretary-General to the General Assembly at its fifty-eighth session, on the understanding that such a report will also be available to the second round of informal consultations of States parties for their consideration.

## **II. ORGANIZATION OF WORK**

### **A. Opening of the second informal consultations**

6. The Director of the Division for Ocean Affairs and the Law of the Sea, Mrs. Annick de Marffy, opened the second Informal Meeting of the States parties.

### **B. Election of the Chairperson**

7. The second Informal Meeting elected Mr. David Balton, Director, Office of Marine Conservation, Department of State (United States of America) as the Chairperson of the Informal Meeting of the States parties by acclamation.

### **C. Attendance**

8. Representatives of the following States parties participated in the meeting: Australia, Barbados, Brazil, Canada, Cyprus, Fiji, Iceland, Iran (Islamic Republic of), Malta, Marshall Islands, Micronesia (Federated States of), Namibia, Nauru, New Zealand, Norway, Papua New Guinea, Russian Federation, Samoa, Tonga, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay.

9. Observers of the following States, United Nations specialized agencies, programmes and bodies, and intergovernmental and non-governmental organizations attended the meeting:

(a) Argentina, Austria, Benin, Colombia, Chile, China, Democratic People's Republic of Korea, Denmark, European Community, Finland, Gambia, Germany, Ghana, Holy See, India, Indonesia, Italy, Jamaica, Japan, Lebanon, Madagascar, Malaysia, Mexico, Mozambique, Nepal, Oman, Peru, Portugal, Republic of Korea, Slovenia, Spain, Timor-Leste, Tuvalu, United Republic of Tanzania, Venezuela and Viet Nam;

(b) United Nations specialized agencies, programmes and bodies: Food and Agriculture Organization of the United Nations (FAO), and the World Bank;

(c) Other intergovernmental organizations: Commonwealth Secretariat, and International Union for the Conservation of Nature and Natural Resources;

(d) Subregional and Regional Fisheries Management Organizations and Arrangements: Comisión Permanente del Pacífico Sur (CPPS), Organización Latinoamericana de Desarrollo Pesquero (Oldepesca);

(e) Non-governmental organizations: Center for International Environment Law (CIEL), Greenpeace International, International Collective in Support of Fishworkers (ICSF), Japan Fisheries Association, National Audubon Society (Living Oceans Program), Natural Resources Defense Council.

### **D. Adoption of the agenda**

10. The Informal Meeting considered the provisional agenda of the meeting. Following minor modifications, the meeting adopted its agenda as contained in Annex I.

### III. CONSIDERATION OF THE ISSUES

#### A. **Review of the Implementation of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)**

11. A number of States Parties made statements of a general nature and provided information on measures taken at the national level and regional levels to implement the provisions of the Fish Stocks Agreement. Among other things, they referred to national legislation, as well as to regional initiatives adopted in order to further the implementation of the Agreement and to conserve and manage threatened fish stocks. A number of delegations underscored that their domestic fisheries legislation had been modelled with a view to implementing the Fish Stocks Agreement. In addition to efforts to conserve and manage fisheries, and implementation of principles such as the precautionary approach and avoidance of incidental by-catch, such legislation was set up so as to ensure that these States met also their international obligations, with respect to control of their vessels on the high seas.

12. Regarding other aspects of the implementation of the Agreement, all delegations stressed the importance of capacity-building in developing countries in order to allow them to give effect to their rights and obligations under the Agreement. A number of delegations also underlined the special needs in this respect of small-island developing countries, as well as those of the least-developed countries.

13. Delegations agreed that the establishment of an Assistance Fund under the terms of Part VII of the Fish Stocks Agreement, as called for in UNGA resolution 57/143, along with the elaboration of the terms of reference for such a fund, would significantly contribute toward enhancing the capacities of developing countries at both the national and regional levels.

14. Many delegations were of the opinion that a major element in the effective implementation of the Agreement was to ensure that flag States fulfilled their responsibilities to control the fishing activities of vessels registered in their territories. They pointed out that the concept of “genuine link“ between flag States and their vessels needed strict scrutiny and clarification in the context of conservation and management of fisheries and that this issue was in need of greater attention by the international community. In that context, a number of delegations said that although States could adopt a number of effective measures as part of their port State control, flag States still bore the key responsibility with respect to their vessels’ compliance with conservation and management measures adopted at the international level. In this regard, a number of delegations noted the problems related to illegal, unreported and unregulated fishing (IUU fishing), which undermined the provisions of the Fish Stocks Agreement. They stressed the need for the prevention of IUU fishing, especially in high seas areas adjacent to areas under national jurisdiction, and for effective enforcement of fisheries conservation and management measures.

15. A number of delegations highlighted the important role that Regional Fisheries Management Organizations (RFMOs) played in the implementation of the Fish Stocks agreement, particularly in meeting the requirements of developing countries. Again, the particular needs of small-island developing States, as well as the least-developed countries were emphasized in this respect, particularly with regard to capacity-building and resource development. On the other hand, concern was expressed that a number of RFMOs do not appear to have applied the precautionary

approach or taken measures to minimize the adverse impact of fisheries on associated and dependent species.

16. In addition to the problems in the implementation of the Agreement owing to, inter alia, the lack of capacity, the prevalence of IUU fishing and excess fishing capacity, several delegations identified other constraints, such as the costs related to the servicing of an increasing number of RFMOs, the need to ensure accurate information on the conservation and management measures adopted by them, the need for consistency in data collection and data management for fleets operating in different regions and the obligation to satisfy various data collection requirements from RFMOs, as well as costs associated with effective control over vessels operating at great distances for their home ports.

17. Most delegations, however, stressed that the implementation of the Agreement, either at the national level or through RFMOs, had to take into account those areas under national jurisdiction, in view of the fact that statistics indicated that more than 90 per cent of fish are taken in such areas. In this connection, a number of delegations provided information on measures they had taken at the national level. They also indicated that RFMOs should undertake their best efforts to assist States Parties with fisheries conservation and management in general, and with the problem of IUU fishing in particular.

18. The representative of Fiji, speaking on behalf of States Parties that were members of the Pacific Islands Forum, stressed that they were highly committed to the Fish Stocks Agreement and its principles. In that connection, she drew attention to the adoption of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which was an expression of support of Pacific Island Forum countries for the principles of conservation and sustainable management of these critically important resources. The delegate stated that the Pacific Islands Forum reiterated its invitation to distant water fishing nations to make every effort to join the parties to that Convention and to give practical effect to that important regional instrument.

19. The representative of New Zealand informed the meeting that her country had taken a comprehensive approach to the implementation of the Agreement, the legal basis of which is provided by the New Zealand Fisheries Act 1996, as amended in 1999. The Act implemented principles contained in the Agreement, such as long-term sustainability of fisheries, the precautionary approach, assessment of the impact of fishing on the environment, and avoidance of incidental catches. The 1999 amendment introduced a high seas permit to be issued to vessels flying the flag of New Zealand, supported by a mandatory use of a satellite-based vessel monitoring system and, where necessary, observer coverage. The permit was aimed at ensuring compliance by vessels with flag State international obligations in relation to high seas fishing. New Zealand nationals who chose to fly the flag of another State were restricted in their choice to flags of States that were parties either to the UN Fish Stocks Agreement, the FAO Compliance Agreement or member of the relevant RFMO in the areas of competence of which, fishing operations would be conducted.

20. The representative of Marshall Islands said that the implementation of the Fish Stocks Agreement was a matter of national priority for his country, particularly with respect to the sustainable management of tuna and other highly migratory fish stocks. A number of measures had been taken at the national level to give effect to the Agreement, including the implementation of a National Vessel Monitoring System, the placing of strict limits on the

number of licenses issued to foreign fishing nations, and the implementation of new minimum terms and conditions for fishing access in the Marshall Islands.

21. He noted that his country was gravely concerned with IUU fishing within its exclusive economic zone (EEZ), which undermined the livelihood of the people that depended on these resources as their primary means of survival. In that respect, he emphasized that regional and international cooperation ought to focus on means to solve this problem. He further emphasized the role of regional fisheries management organizations in assisting small island developing countries such as the Marshall Islands, particularly in providing capacity-building and overcoming resource constraints. It was only through such regional organizations that countries such as his were able to pursue the implementation of comprehensive fisheries management arrangements.

22. The representative of Ukraine indicated that his country, as a geographically disadvantaged State bordering a sea that was poor in living resources and suffering from the depletion of fish stocks in its EEZ, placed a special emphasis on the problem of IUU fishing. All States should apply effective measures for the conservation, management and exploitation of fish stocks in order to protect living resources and preserve the marine environment. This was all the more important when one takes into account that 90 per cent of the world's fisheries fall within areas under national jurisdiction.

23. The delegate also informed the consultations about new fisheries legislation which had been adopted by Ukraine on the basis of the provisions and principles of the Fish Stocks Agreement. He said that further practical steps to implement the provisions of the Agreement were being planned, including the adoption of legislation that would enhance the role of the flag State in the conduct of high seas fishing and increase the responsibility of vessel owners.

24. The representative of the United States of America stated that the United States had domestically enacted a number of laws in the area of fishery conservation and management. The primary legislation in this area was the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. Provisions of this law require the identification of over-fished stocks and the development of rebuilding plans for such fisheries. These and other measures seek to implement the precautionary approach by specifying objectives and measurable criteria for determining the status of fisheries. The activities of U.S. fishermen are further monitored through the High Seas Fishing Compliance Act, which seeks to ensure that U.S. fishing activities outside of U.S. national jurisdiction are compatible with relevant regional fisheries management organizations (RFMOs') conservation and management measures. In particular, regulations promulgated under this Act require all U.S. flagged vessels fishing on the high seas to obtain a permit authorizing such fishing, refrain from fishing in a manner inconsistent with any internationally-agreed conservation and management measures recognized by the United States, display approved vessel markings and provide data on catch and effort.

25. The United States has also adopted domestic legislation to implement in areas under its national jurisdiction measures adopted by RFMO conventions to which it was a party. These laws worked in concert to provide a strong basis for the implementation of the United Nations Fish Stocks Agreement, as well as provide support to various initiatives taken within the FAO.

26. Non-State Parties, attending as observers, also made statements of a general nature on fisheries matters and, more significantly, on measures taken at their national level. The observer

from Japan said that his country, as a party to UNCLOS, was active in contributing the conservation and management efforts outlined in the Fish Stocks Agreement. It was especially active with respect to the conservation and management of tuna and tuna-like species, and has been participating in the FAO in relation to global issues, while also participating in regional management organizations.

27. He pointed out that a reduction of fishing capacity was a matter of urgency, especially in view of the decrease in tuna population in many areas due to overfishing. He reported on measures taken at the national level, e.g., the scrapping of 20% of its domestic large scale tuna longline vessels, in accordance with the FAO International Plan of Action adopted in 1999, and called on other States to make similar reductions. He further linked the issue of IUU fishing vessels, operating outside international management schemes, to the problems of excess fishing capacity and called for urgent measures in this regard. Japan was in consultation with owners of large scale tuna longline vessels operated and owned by a certain fishing entity in East Asia, which were involved in IUU fishing. He noted that on the basis of an agreement with these owners, appropriate measure had been taken which resulted in the reduction of such vessels from 240 to about 30.

28. The observer from the Republic of Korea said his country was attempting to conserve and manage depleted fish stocks through international cooperation within regional fisheries management organizations. It has also made every effort to harmonize its national laws and regulations in order to maintain its duties and obligations under relevant international laws. Recently, his country submitted its instrument of acceptance with respect to the FAO Compliance Agreement.

29. The observer from Italy, speaking on behalf of the European Union, announced that the member States of the European Community had completed all necessary internal procedures to express their consent to be bound by the United Nations Fish Stocks Agreement and that the ratification of that Agreement by the European Community and its member States was imminent. He noted that the European Union attached great importance to the protection of the environment, sustainable use of natural resources, including responsible fisheries, and that the European Union considers UNCLOS and the UN Fish Stocks Agreement to be effective tools for strengthening the conservation and management of straddling and highly migratory fish stocks. He reaffirmed the commitment of the European Union to promote cooperation among States for the full implementation of all the provisions of the Agreement.

30. The observer from the Food and Agriculture Organization (FAO) of the United Nations indicated that the 1993 FAO Compliance Agreement, the 1995 Fish Stocks Agreement and the 1995 FAO Code of Conduct for Responsible Fisheries could be viewed as a package designed to confront fisheries problems at different levels and on different fronts. The Compliance Agreement, an instrument that specifically addresses the responsibilities of flag-States to ensure compliance with applicable international conservation and management measures on the high seas, had entered into force on 24 April 2003. However, it was a matter of concern that of the 34 States that had ratified or acceded to the Fish Stocks Agreement, only nine States had also accepted the Compliance Agreement. In fact, in one region where fisheries were highly significant, not one country had yet accepted the Compliance Agreement. He also confirmed that FAO would continue to report annually to DOALOS on the implementation of the 1993 FAO Compliance Agreement with a view to having such input included in the annual reports of the Secretary-General to the United Nations General Assembly.

31. Regarding the implementation of the UN Fish Stocks Agreement, he stated that the FAO stood ready to assist its Members and to cooperate with other United Nations agencies to this effect. He emphasized that the FAO took a positive and constructive approach to facilitating the full and effective implementation of the Agreement. He further commented on a number of fisheries issues, related events, and FAO activities.

32. The observer from OLDEPESCA summarized the actions taken by his organization in relation to the implementation of the UNFSA. He informed the meeting that, from 1996 to 2002, the Ministers Conference of OLDEPESCA adopted several resolutions calling upon Member States to consider becoming parties to the UN Fish Stocks Agreement. OLDEPESCA members also focused on three main areas: (i) assisting for the establishment of RFMOs; (ii) encouraging regional arrangements; and (iii) strengthening existing instruments for the conservation of straddling fish stocks and highly migratory fish stocks. Some of the concrete actions taken by OLDEPESCA included signing a cooperation agreement with the Inter American Development Bank (IADB) for the organization of regional meetings to analyze technical and legal implications of the application of UNFSA.

33. The observer from IUCN noted that the Fish Stocks Agreement was a forward-looking instrument the implementation of which could significantly advance several important policies. He pointed out that the success of the Agreement depended on a number of factors, among the most important of which were the undertaking of greater efforts by RFMOs to incorporate provisions of the Agreement on compliance, as well as far greater international cooperation and coordination to shape and disseminate practical guidance for ecosystem-based fisheries management.

**B. Report of the Secretary -General on the status and implementation of the United Nations Fish Stocks Agreement and its impact on related or proposed instruments throughout the UN system, with special reference to implementation of Part VII of the Agreement dealing with the requirements of developing States**

34. The Secretariat introduced the Report of the Secretary-General on the status and implementation of the United Nations Fish Stocks Agreement and its impact on related or proposed instruments throughout the UN system, with special reference to implementation of Part VII of the Agreement dealing with the requirements of developing States (A/58/215), the provisional version of which had been made available on DOALOS web site. The Secretariat also reported that, in addition to the respondents to the voluntary survey listed in Annex I of the report, three more replies had been received from Iceland, South Africa and the CPPS.

35. The delegations expressed their appreciation to DOALOS for the report which they considered a useful tool that brought together disparate information into one well-organized reference. The discussion of the report focused on its conclusions and recommendations, as well as on other issues raised, such as the role of coastal, flag and port States, strengthening of RFMOs, RFMO species coverage, IUU fishing, etc. During a question-and-answer period that followed, the Secretariat responded to several queries and requests for clarification.

**C. Establishment of the Assistance Fund under Part VII of the Agreement to assist developing States parties**

**1. Terms of reference of the Assistance Fund**

36. The United Nations General Assembly, following the deliberations at the first informal meeting of States parties to the United Nations Fish Stocks Agreement on the establishment of an assistance fund under article VII of the Agreement, urged the States Parties in its resolution 47/153 to develop detailed terms of reference for an assistance fund in accordance with Part VII of the Agreement and requested that certain activities be considered for early implementation through the fund.

37. In accordance with the request made by the General Assembly, the Chairman of the second Informal Consultations prepared a set of draft terms of reference for an assistance fund, which served as the basis for discussion at this session.

38. During the discussion, delegations stressed the fundamental importance of the implementation of the provisions of Part VII to the successful implementation of the Agreement as a whole and, in particular, the assistance to developing countries for the realization of their rights and fulfilment of their obligations under the Agreement.

39. In a general exchange of views, a number of delegations said such an Assistance Fund should be administered by the United Nations, since the Agreement itself was a United Nations Agreement. However, a majority of delegations indicated that the FAO, with its expertise in the area of fisheries, should play a leading role in the activities of the Fund.

40. The representative of the FAO said that a possible role for that organization in administering the Assistance Fund was referred to the 25th session of the Committee on Fisheries (COFI) in February 2003. The report of COFI stressed that the establishment of such a fund would constitute one means among others of assisting developing countries to participate in the Agreement.

41. In view of various views expressed on the subject, the Chairman decided to establish an open-ended working group to develop the terms of reference of the Assistance Fund, and draft the specific recommendation to be submitted to the General Assembly regarding the establishment of such Fund.

42. Following a discussion in the working group, the Informal Consultations agreed on the Terms of Reference for the Assistance Fund (see Annex II). The Terms of Reference address the following issues: reasons for establishing the Assistance Fund, establishment of the Fund, implementing office, collaboration between the United Nations and the Food and Agriculture Organization, contributions to the Assistance Fund, application for assistance, purposes of assistance, consideration of applications and granting of assistance, application of Financial Regulations and Rules of the Food and Agriculture Organization, reporting, revision and review, and publicity.

43. The Terms of Reference emphasized that the Fund was only one component of assistance to be provided in accordance with Part VII of the Agreement and meant to supplement other sources of assistance.

## **2. Facilitating International Financial Institutions involvement in the implementation of the Agreement, including contributions to the Assistance Fund**

44. All delegations agreed, as underlined by General Assembly resolution 57/143, paragraph 14, and as also stated in the draft Terms of Reference, that the Trust Fund was only one of several components in the programme of assistance envisaged under Part VII of the Agreement. In fact, it was underlined that, in order to fully implement the requirements of developing States

contained in Part VII, financial resources and capacity-building had to be provided through a number of programmes. On the other hand, they noted with concern that a meeting of donors held at the 25<sup>th</sup> session of FAO Committee on Fisheries discussed the declining amount of assistance for fisheries management development, in particular for scientific data collection.

45. The observer from the European Community pointed out that internal regulations within the Community would make future contributions to the Trust Fund difficult. However, he indicated that the Community intended to discharge its obligations under Part VII by continuing a programme of bilateral partnerships with developing countries, with the aim of assisting them in the development of national policies in conformity with the Agreement.

46. Several delegations supported the involvement of the World Bank (WB) in the long-term implementation of Part VII of the Agreement.

47. In this regard, the meeting welcomed the briefing by the representative of the World Bank (WB) on the work of the WB in the field of fisheries. Details were given on the establishment of three new large-marine ecosystems projects, with the support of the Global Environment Facility (GEF). Moreover, it was reported that the GEF had recently accepted a proposal by the WB for a strategic partnership to develop fisheries off the East and West coasts of Sub-Saharan Africa. This project would address a number of issues relevant to the implementation of the Agreement through the adoption of a holistic approach to fisheries management. The focus of the project will include biodiversity, sustainable management (including reduction of overcapacity) and the ecosystem approach. Its aim will be to build capacity for coastal States to participate more fully in the sub-regional fisheries organizations. If the project proved successful, it could be used as a model for other regions.

48. One delegation welcomed the possibility for future partnerships with the World Bank to introduce the large marine ecosystem mechanism in the South Pacific region.

#### **D. Consideration of Part II of the Agreement (Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks)**

##### **General remarks**

49. A number of States parties emphasized the importance of Part II of the Agreement on Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and provided information on national measures that had been adopted to implement it.

50. Several delegations drew attention to difficulties in implementing Part II of the Agreement. In this connection, they referred in particular on the need to improve scientific knowledge as a basis for the adoption of management measures and policy decisions. They also identified the development of a culture of assessment and evaluation of economic and social impacts as a major challenge and proposed that the General Assembly consider addressing these issues within the context of the implementation of the Agreement. They further underlined the fact that developing countries often lacked the capacity for data collection and scientific infrastructure, which was essential for the implementation of Part II of the Agreement. In order to address these problems, other delegations emphasized that capacity building and increased sharing of scientific information were necessary. The fact that the Trust Fund would provide assistance for this type of requirements was welcomed.

51. A number of delegations noted a general increase in non-compliance with the principles of conservation and management of straddling fish stocks and highly migratory fish stocks provided

for in Part II of the Agreement. Lack of implementation by flag States of their obligations was considered to be a primary reason for such increase. One delegation underlined the need for effective monitoring, control and surveillance as the primary means for effective implementation of Part II. In this respect, another delegation indicated that in the South-east Atlantic, where coastal States were unable to undertake effective control and monitoring, illegal fishing activities were increasing.

52. One delegation proposed a ban on the practice of shark finning (i.e., the practice of removing a shark's fins and discarding its carcass afterwards) on the high seas. It was emphasized that many shark species were vulnerable due to their low reproductive rates and in some cases they were subject to serious depletion from overfishing. Their vulnerability was recognized by the 1999 FAO International Plan of Action for the Conservation and Management of Sharks, which called, inter alia, for the implementation of national plans of action to conserve and manage sharks.

53. The same delegation identified RFMOs as the primary implementing bodies for such moratorium. It proposed that next year the Secretary-General's report on fisheries issues included a section relating to the impact that large-scale commercial shark fisheries on shark populations off the coasts of developing States and the availability of these resources to artisanal fisheries and local markets.

54. In addition, several delegations informed the meeting that they had already adopted at the national level bans on shark finning, and expressed their support for the proposal requesting the General Assembly to call for a moratorium on the practice of shark finning at sea. They also urged States to adopt measures for their fishing fleets with a view to implementing such a moratorium. One delegation pointed out that the proposal created the opportunity to cooperate and adopt a holistic approach at the global level.

55. The National Audubon Society and the Ocean Conservancy provided detailed information on the practice of shark finning and the vulnerable character of shark species, to illustrate the seriousness of the problem.

56. One State Party, however, expressed the opinion that the Informal Meeting should not discuss, among other things, substantive issues such as shark fisheries, since the Agreement did not provide for the Meeting of States Parties to discuss such issues. These matters should be instead addressed by the General Assembly, in light of their relevance for the international community as a whole. It added that the upcoming review conference would provide a forum where issues on the competence of the Informal Consultations could be discussed.

57. Two observer delegations underlined the fact that that any decision taken in relation to shark finning should be based on scientific evidence, such as mortality data and shark abundance, as requested both by UNCLOS and the Agreement. They further added that a discussion on such issues by the General Assembly would be of a political nature and would establish a bad precedent for future decisions regarding stock management. They stressed that any decision should also be consistent with the lists of endangered species provided under the Convention on International Trade in Endangered Species (CITES).

58. Another State Party emphasized that high seas biodiversity and the impact of fisheries on it, especially bottom trawling of seamounts, were cross-cutting issues that needed to be addressed.

In this regard, it was noted that a conference on high seas biodiversity, recently organized by the Government of Australia, also touched on the impacts of fishing on biodiversity.

59. The representative of IUCN called for urgent consideration to be given to means for managing risks to the biodiversity of seamounts, cold-water coral reefs and certain other underwater features beyond national jurisdiction. A moratorium on seamount fisheries was proposed as a short-term measure, while in the long term, RFMOs should be requested to put in place effective measures to manage these fisheries in their areas of competence. In areas outside the present RFMOs' competence, new management arrangements should be established. She also suggested that the General Assembly request the governing bodies of RFMOs to provide information on the measures they could take to address this issue. In this regard, she underlined the need to inform the international community on the competence of RFMOs regarding species coverage in their areas of competence as well as possible developments. Such information would help the identification of unregulated fisheries and the establishment of new arrangements to cover them.

60. The representative of IUCN also highlighted the adverse impacts of high seas bottom trawling on the biodiversity and habitat of the coastal States' continental shelf beyond 200 miles. She proposed that the General Assembly call for further study of this problem and of measures that may be taken through RFMOs, by coastal States and by the international community to protect the biodiversity of these areas subject to coastal States' jurisdiction. A report on all these issues will be prepared by IUCN and the Natural Resources Defense Council in the near future.

61. With respect to the role of RFMOs in the implementation of Part II of the Agreement, a number of delegations emphasized that RFMOs ought to be given the tools to monitor and prevent breaches of the provisions contained therein. Several delegations agreed that the next Informal Consultations of States Parties should address the role and competence of existing RFMOs, particularly their deficiencies concerning species coverage, ecosystem-based fisheries management, and reduction of by-catch of associated or dependent species. They also identified as a major gap in present high seas fisheries management the absence of regulating regime for demersal species. An extension of the Agreement's regulatory regime was considered a possible solution to addressing this gap. A State party pointed out however that other forums had the mandate to oversee the work of RFMOs (e.g. FAO biannual meeting of RFMOs).

#### **Article 5. General principles**

62. Several delegations described the measures they have adopted at the national level to implement the general principles contained in Article 5 of the Agreement. In this connection, the representative of the United States indicated that the National Standards for Fishery Conservation and Management adopted by the United States contained measures which were similar in nature and intent to the General Principles found in Article 5, and that any Fishery Management Plan ought to be consistent with these National Standards. In response to the problem of by-catch, the representative informed the meeting of the adoption by his country in 2003 of a comprehensive National By-catch Strategy. Efforts to reduce by-catch and fish discards in international fisheries had been undertaken both through national legislation and international agreements. The delegation also suggested that States should adopt effective by-catch strategies within existing RFMOs and when they established new RFMOs. He pointed out that the implementation of ecosystem-based management under Article 5 was a challenge,

particularly due to the resource-intensive efforts needed for the transition from the single species management to the ecosystem-based management.

63. The representative of Canada recalled the measures adopted by her country to implement article 5 of the Agreement, such as those relating to the conservation of marine biodiversity, in particular through the establishment of marine protected areas, such as the Endeavor Hot Vents Area. She also made reference to national measures taken to address issues connected with over-fishing and fishing capacity.

64. A number of other delegations also provided information on national measures adopted in conformity with the general principles in Article 5, such as the establishment of marine parks and the adoption of an ecosystem approach.

65. In addition, the International Collective in Support of Fishworkers drew attention on the important role of artisanal fishing activities for highly migratory species like tuna and sharks, in particular in the Indo-Pacific region. It pointed out that the role of artisanal fishers in regional fisheries management organizations needed to be recognized more widely. In this regard, it proposed that the FAO should prepare a report on the status of artisanal and small-scale fisheries that were dependent on straddling fish stocks and highly migratory fish stocks.

#### **Article 6. Application of the precautionary approach**

66. Several delegations described the national measures they adopted to implement Article 6 on the precautionary approach. Efforts to improve the implementation of this article in new and existing RFMOs and the work of scientists to develop the precautionary approach through the identification of thresholds, optimal harvest levels and other necessary elements for use in data-poor situation were underlined. The representative of Canada pointed out that, at the national level, Canada adopted more stringent requirements for the application of the precautionary approach than those contained in the Agreement. In the EEZ of Canada, the precautionary approach was being applied to all species through an Objective Base Fisheries Management (OBFM), which was used to define conservation limits for target species; establish fisheries management objectives; develop fisheries management strategies; identify performance management indicators, and develop plans.

67. The observer from Mexico informed the meeting that Mexico had adopted a species-based, selective implementation of the precautionary approach, which made a distinction between species subject to its application and those that were not covered.

68. The representative of the National Audubon Society underlined the efforts necessary to implement the precautionary approach in practical terms. He recalled that the implementation of the precautionary approach was provided for both in the Agreement and in the FAO Code of Conduct for responsible Fisheries. He proposed that future efforts to monitor the implementation of the Agreement included information on RFMOs and on domestic measures to implement the precautionary approach.

#### **Article 7. Compatibility of conservation and management measures**

69. The representative of the United States provided information on the application of consistent approaches to the management of international fisheries and domestic fisheries, for example through the extension of compatibility requirement to international fisheries in which its nationals participated. He indicated that his country adopted the High Seas Fishing Compliance Act in order to ensure that fishing activities by nationals outside US jurisdiction were compatible

with conservation and management measures adopted by the relevant RFMOs. Under this Act, vessels fishing on high seas areas were required to obtain a permit authorizing them to conduct such fishing, and had to refrain from fishing in a manner inconsistent with internationally agreed conservation and management measures. They had also to display approved vessel markings and provide data on catch and effort.

70. Another delegation reminded the Informal Consultations of the importance of consultations and cooperation in the implementation of Article 7 and pointed out that these issues should be further reflected in the Secretary-General report on the implementation of the Agreement. It also stressed that the provisions of this article should be implemented to ensure the application of the highest standard in conservation measures, and not the lowest common denominator.

#### **IV. INFORMATION ON UPCOMING RELATED MEETINGS**

71. The delegate of New Zealand informed the Informal Meeting that her Government intended to host an international conference called “Deep Sea 2003” in Queenstown, New Zealand, from 1 to 4 December 2003. The conference would focus on management, science and governance issues both in relation to high seas and continental shelf fisheries.

72. The delegate of Canada provided information about her Government’s intention to host an international conference in St. John, Newfoundland, Canada in the spring of 2005 to assist in the preparation of the Review Conference. The objectives of the conference would be: (i) to encourage increased ratification and accession to the Agreement and (ii) to share best practices in the implementation of the Agreement. The output of the conference would be reported to the Review Conference of the United Nations Fish Stocks Agreement.

73. The delegation of the United States of America stated that it would provide the FAO with the results of an expert Annual Workshop on Sea Turtle Biology and Conservation.

74. The representative of IUCN informed the Informal Meeting that IUCN would host the World Parks Congress in Durban in September 2003.

75. The delegate of Chile informed the Informal Meeting that his Government, together with Australia, expected to host a symposium in Valdivia, Chile, on the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR). One of the objectives of the symposium would be the consideration of the relationship between CCAMLR and the Agreement.

#### **Dates and venue of next informal meeting of States parties**

76. There was a general agreement that the annual Informal Consultations of States Parties to the United Nations Fish Stocks Agreement were a useful forum for exchange of information on and review of the implementation of the Agreement, and for consideration of other relevant issues, including consideration of recommendations to the General Assembly. One delegation, however, stated that such meetings are without prejudice to the General Assembly’s role as the only body having the competence to undertake a comprehensive review of all matters related to the oceans and its deliberations on the Agreement and its implementation. In this regard, the second Informal Consultations recommended to the General Assembly to request the Secretary-General to convene a third Informal Consultations of the States Parties to the United Nations Fish Stocks Agreement in 2004.

## **V. ADOPTION OF RECOMMENDATION(S) TO THE FIFTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY**

77. Following the adoption of the Terms of Reference for the Assistance Fund under Part VII of the Agreement (see paras. 42-43 above), the Informal Consultations agreed to recommend to the General Assembly the establishment of such a Fund for the benefit of developing States Parties to United Nations Fish Stocks Agreement, to be administered by FAO, in collaboration with the United Nations. The recommendation would be submitted to the fifty-eighth session of the General Assembly in the resolution on “Oceans and the law of the sea” under the sub-item “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”(see Annex III).

### *Notes*

<sup>1</sup> In this paragraph, the General Assembly requested the Secretary-General, once the Agreement enters into force, to consult with the States parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement), for the purposes and objectives of, inter alia, considering the regional, subregional and global implementation of the Agreement; making any appropriate recommendations to the General Assembly on the scope and content of the annual report of the Secretary-General relating to the Agreement ; and preparing for the review conference to be convened by the Secretary-General pursuant to article 36 of the Agreement.

## **Annex I Agenda**

### **Second informal consultations of the States parties to The Agreement for the Implementation of the Provisions of the United Nations Convention on Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement) 23-25 July 2003 United Nations, New York**

1. Opening of the second informal consultations by the Chairperson of the first informal consultations.
2. Election of the Chairperson.
3. Adoption of the Agenda.
4. Organization of work.
5. Review of implementation of the United Nations Fish Stocks Agreement:
  - (a) Update on implementation by States parties – in particular by States that have become parties since the first meeting;
  - (b) Update on implementation through Regional Fisheries Management Organizations –reports from RFMO participants;
  - (c) Report of the Secretary -General on the status and implementation of the United Nations Fish Stocks Agreement and its impact on related or proposed instruments throughout the UN system, with special reference to implementation of Part VII of the Agreement dealing with the requirements of developing States:
    - (i) Existing arrangements and assistance available to developing States that may be relevant under the Agreement;
    - (ii) Other possible forms of assistance.
  - (d) Establishment of the Assistance Fund under Part VII of the Agreement to assist developing States parties:
    - (i) Terms of reference of the Assistance Fund;
    - (ii) Facilitating International Financial Institutions involvement in the implementation of the Agreement, including contributions to the Assistance Fund.
  - (e) Consideration of Part II of the Agreement (Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks):
    - (i) Article 5, General principles;
    - (ii) Article 6, Application of the precautionary approach;
    - (iii) Article 7, Compatibility of conservation and management measures;
6. Information on upcoming related meetings:
  - (a) International Conference on the Governance and Management of Deep Sea Fisheries, 1- 4 December 2003, Queenstown, New Zealand;
  - (b) Conference on Implementation of the United Nations Fish Stocks Agreement (Canada);
  - (c) FAO Technical Consultation on Conservation of Sea Turtles.
7. Dates and venue of next meeting.
8. Adoption of recommendation(s) to the fifty-eighth session of the General Assembly.
9. Other matters.

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## **Annex II**

### **Assistance Fund under Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

#### **Terms of Reference**

##### **Reasons for establishing the Assistance Fund**

1. Article 25 of Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (hereinafter referred to as “the Agreement”) requires States parties to cooperate either directly or through subregional, regional and global organizations to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks; to enable their participation in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11 of the Agreement; and to facilitate the participation in subregional and regional fisheries management organizations and arrangements.
2. Article 25 of the Agreement further provides that cooperation with developing States for the purposes of that 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. Such assistance shall inter alia be directed specifically towards improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information as well as stock assessment and scientific research and 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.
3. Under Article 26 of the Agreement, States are required to cooperate to establish special funds to assist developing States in the implementation of the Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
4. This fund is one component of assistance to be provided in accordance with Part VII of the Agreement and supplements other sources of assistance.

##### **Establishment of the Assistance Fund**

5. The Fund is established pursuant to General Assembly resolution A/58/...
6. The purpose of the Fund is to provide financial assistance to developing States parties to the Agreement to assist in the implementation of the Agreement in accordance with Part VII of the Agreement.

##### **Implementing Office**

7. The Food and Agriculture Organization (FAO) will administer the Fund and act as the implementing office for the Fund. The FAO will establish a Trust Fund account for the purpose of the Fund in collaboration with the United Nations. All voluntary financial contributions made to the FAO for this purpose shall be deposited by the FAO into the Trust Fund account.
8. In the administration of the Fund, the United Nations and the FAO shall take into account experience and best practice in the management of other trust funds established within the framework of the 1982 United Nations Convention on the Law of the Sea.

##### **Collaboration between the United Nations and the Food and Agriculture Organization**

9. The United Nations and the FAO will collaborate with each other and will make available to each other all information and assistance as may be required in relation to the administration and operation of the Fund. In particular they will, as appropriate, seek to achieve mutual benefits from any arrangements under this Fund with similar activities, including in relation to the promotion and implementation of the 1993

FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the 1995 FAO Code of Conduct for Responsible Fisheries.

10. The United Nations will receive applications, ensure that the agreed procedural requirements are met, and then forward them expeditiously to the FAO for review and decision, in accordance with these Terms of Reference. In the case of applications for assistance under paragraph 14(g) of these Terms of Reference concerning proceedings for the settlement of disputes under the Agreement, the United Nations will review and decide on these applications.

#### **Contributions to the Assistance Fund**

11. The United Nations and the FAO invite States, intergovernmental organizations, international financial institutions, national institutions, non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the Fund.

#### **Applications for assistance**

12. An application for financial assistance from the Fund may be submitted by any developing State party to the Agreement. Such an application may also be submitted on behalf of the Party by an appropriate sub-regional or regional organization or arrangement.

13. The application should specify how it relates to the implementation of the Agreement and include a description of the desired outputs of the project/expenditure and an itemisation of anticipated costs.

#### **Purposes of assistance**

14. The purpose of the financial assistance applied for should be specified and may be sought for the following purposes:

(a) Facilitating the participation of representatives from developing States parties, in particular the least-developed among them and small island developing States parties to the Agreement, in the meetings and activities of relevant regional and subregional fisheries management organizations and arrangements.

Such assistance may include such costs as travel costs and, if appropriate, daily subsistence allowances for delegations participating in relevant regional and subregional fisheries management organisations or arrangements, including technical experts.

(b) Assisting with travel costs, and if appropriate daily subsistence allowances, associated with the participation of developing States parties, in particular the least-developed among them and small island developing States parties to the Agreement, in relevant meetings concerning high seas fisheries of relevant global organizations, such as the United Nations Development Programme, the Food and Agriculture Organization and other specialised agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organisations and bodies.

Applications for this purpose shall include details of how the meeting in question relates to implementation of the Agreement.

(c) Supporting ongoing and future negotiations to establish new regional or subregional fisheries management organizations and arrangements in areas where such bodies are not currently in place, to renegotiate founding agreements for such organizations and arrangements and to strengthen existing subregional and regional fisheries management organizations and arrangements in accordance with the Agreement.

A condition for such support is that reference to implementing the Agreement is made in founding documents and/or work programmes of the regional or subregional fisheries management organizations or arrangements and in the national fisheries policies and/or management plans of States parties.

(d) Building capacity for activities in key areas such as effective exercise of flag State responsibilities, monitoring, control and surveillance, data collection and scientific research relevant to straddling and highly migratory fish stocks on a national and/or regional level.

(e) Facilitating exchange of information and experience on the implementation of the Agreement.

(f) Assisting developing States parties to the Agreement, in particular the least-developed among them and small island developing States, with human resources development, technical training, and technical assistance in relation to conservation and management of straddling and highly migratory fish stocks and development of fisheries for such stocks, consistent with the duty to ensure the proper conservation and management of such stocks.

(g) Assisting in meeting the costs involved in proceedings for the settlement of disputes between States parties to the Agreement concerning the interpretation or application of the Agreement in accordance with Part VIII of the Agreement or proceedings concerning the interpretation or application of a subregional, regional or global fishery agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks and complementary to any assistance provided under the ITLOS Trust Fund established by General Assembly resolution 55/7 or the Trust Fund for the International Court of Justice established by General Assembly resolution A/47/444 or the financial assistance fund established by the Permanent Court of Arbitration.

#### **Consideration of applications and granting of assistance**

15. Requests for financial assistance shall be considered without delay in the order in which they have been submitted. The FAO will establish a panel of independent and impartial experts of the highest professional standing to review the applications and to make recommendations on the amount of financial assistance to be given in each case. The panel also will include two official representatives from States parties to the Agreement, one of whom is a donor to the Fund, as well as technical experts and a representative from the United Nations, as required.

16. In case of applications for travel related expenses, as specified in paragraphs 14(a) and 14(b), the FAO may make decisions on applications without referral to the panel.

17. Review of applications and decisions shall be guided by the purposes of the Fund, the provisions of the Agreement, the financial needs of the requesting developing State party and availability of funds, with priority given to least developed countries and small island developing States parties to the Agreement. The financial assistance shall be provided on an impartial basis. Consideration of applications will also include an assessment of whether any existing alternative sources of assistance are available. All decisions on assistance from the Fund shall take into account the size of the Fund and the need for cost effectiveness in its use.

18. In considering applications, the United Nations and the FAO should also work together to inform relevant regional fisheries management organizations and UN bodies about applications under the Fund in order that they may comment if they so choose.

19. The United Nations and the FAO, as appropriate, will provide financial assistance from the Fund in an expeditious manner in accordance with paragraphs 15-18 of these Terms of Reference.

#### **Application of the Financial Regulations and Rules of the Food and Agriculture Organization**

20. FAO shall establish and manage the Fund in accordance with its Financial Regulations and other applicable Rules.

#### **Reporting**

21. An annual report on the activities of the Fund, including a financial statement of the contributions to and disbursements from the Fund, shall be included in the report of the Secretary-General of the United Nations on "Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments". A report on the activities of the Fund to date, including a financial statement of the contributions to and disbursements from the Fund shall also be presented at the Review Conference provided for in Article 36 of the Agreement.

22. Recipients of assistance shall be required to provide a report on the purpose and outcome of the approved expenditure to the FAO for the above-mentioned report. The United Nations and the FAO shall share these reports.

**Revision and Review**

23. These Terms of Reference may be revised if circumstances so require.

24. The States parties to the Agreement shall periodically review the activities of the Fund with a view to assessing and evaluating the effectiveness of the financial assistance provided pursuant to these Terms of Reference.

25. Taking into account paragraph 17 of these Terms of Reference, the States parties to the Agreement may also make recommendations on priorities for the use of the Fund.

**Publicity**

26. The United Nations and the FAO will maintain on their websites details of the Fund, including details on application procedures, assistance provided, and links to other relevant websites. The United Nations and the FAO should also explore ways to promote contributions to the fund and knowledge of the fund through regional fisheries management organizations and arrangements, multilateral donor organizations, and international financial institutions.

### Annex III

**Proposed language for inclusion in the 58<sup>th</sup> UNGA Resolution entitled “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”**

*“The General Assembly*

*“ ...*

*“Decides to establish an Assistance Fund under Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks to assist developing States parties in the implementation of the Agreement, which should be administered by the Food and Agriculture Organisation which should act as the implementing office for the Fund, in collaboration with the United Nations, in accordance with the Terms of Reference agreed at the Second Round of the Informal Consultations of the States parties to the Agreement and appropriate arrangements made between them.*

*“ ... ”*