
(Prepared by the President of the Conference)

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ANNEX
Annex Outcome of the Review Conference
I. Introduction

1. Pursuant to article 36 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 (the Agreement), and in accordance with paragraph 16 of General Assembly resolution 59/25, paragraph 16, of 17 November 2004, four years after the entry into force of the Agreement, the Secretary-General convened, from 22 to 26 May 2006, in New York, the Review Conference on the Agreement.

2. The Review Conference was mandated to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks (article 36, paragraph 1), by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of those stocks (article 36, paragraph 2).

3. Pursuant to paragraph 6 of General Assembly resolution 56/13 of 28 November 2001, States Parties to the Agreement have held, since 2002, annual informal consultations, pursuant to General Assembly resolution 56/13, paragraph 6, of 28 November 2001, for the purposes 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.

4. Pursuant to paragraph 23 of General Assembly resolution 60/31 of 29 November 2005, the fifth round of Informal Consultations of States Parties to the United Nations Fish Stocks Agreement, held from 20 to 24 March 2006, in New York, served as the preparatory meeting for the Review Conference. The preparatory meeting addressed procedural and organizational matters as well as substantive issues related to the Review Conference. These included consideration of a report prepared by the Secretariat in cooperation with the United Nations Food and Agriculture Organization (FAO), submitted in accordance with paragraph 17 of General Assembly resolution 59/25, to assist the Review Conference in the implementation of its mandate under paragraph 2 of article 36 of the Agreement (A/CONF.210/2006/1), as well as the preparation of recommendations to the Conference on a provisional agenda (A/CONF.210/2006/3), organization of work (A/CONF.210/2006/4), provisional rules of procedure (A/CONF.210/2006/6), and elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). The report prepared by the Secretariat contained detailed information from Parties on measures taken to implement the Agreement, from non-Parties on measures adopted that reflect the principles in the Agreement, and from RFMOs on how relevant provisions of the Agreement have been incorporated into conservation and management measures.

5. In accordance with article 36, paragraph 1, of the Agreement, invitations to participate in the Review Conference were addressed by the Secretary-General of the United Nations to all States Parties to the Agreement and those States and entities which are entitled to become
parties to the Agreement as well as to those inter-governmental organizations (IGOs) and non-governmental organizations (NGOs) entitled to participate as observers.
II. Procedural Matters

A. Opening of the Review Conference on the United Nations Fish Stocks Agreement

6. The Director of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Mr. Vladimir Golitsyn, opened the Review Conference on the United Nations Fish Stocks Agreement, on behalf of the United Nations Secretary-General.

B. Election of the President

7. The Conference elected by acclamation Ambassador David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Department of State (United States), as President of the Conference.

C. Opening Statements

8. In his opening statement, the President noted that the Conference was not taking place in isolation, and highlighted developments since the entry into force of the Agreement. He noted the opportunity offered by the Conference to develop proposals for strengthening the implementation of the Agreement. In order to do so, he noted, a wealth of information had been provided by several States and organizations. Highlighting the finding of the FAO that approximately thirty percent of stocks of highly migratory tuna and tuna like species and nearly two thirds of straddling and high seas fish stocks were over-exploited or depleted, he expressed the hope that the Conference would generate ideas and commitments on practical steps to implement the Agreement in ways that better fulfil its objectives and address the status of these resources.

9. The President also recalled that the Conference was mandated to review and assess the adequacy of the provisions of the Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions, according to article 36 of the Agreement, but not to amend the Agreement. He stressed that the Conference would proceed in an open and inclusive manner, with all participants having a reasonable chance to contribute.

10. The Director of DOALOS made a statement on behalf of Mr. Nicolas Michel, Under Secretary-General for Legal Affairs, The Legal Counsel. He stated that the Agreement was considered to be the most important legally binding global instrument for the conservation and management of fishery resources since the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982. The Agreement elaborated on the provisions of UNCLOS, in particular those related to the strengthening of flag States duties over their vessels fishing on the high seas as well as to the role of subregional and regional fisheries management organizations and arrangements (RFMOs). The Agreement, which also took into account the requirements of developing States, further introduced port State controls to promote compliance with high seas fisheries conservation and management measures, and new approaches to fisheries management, such as the application of the precautionary and ecosystem approaches. The Legal Counsel stressed that, as a result of the Agreement, the management of high seas fisheries had been increasingly based on the principles of long-term sustainability of fishery resources, that several States had adopted national laws and regulations addressing conservation of stocks, flag State responsibilities and port State control, and that cooperation for setting up new RFMOs to manage high seas areas or species not covered by
existing RFMOs had intensified. In addition, an Assistance Fund had been established by the General Assembly under Part VII of the Agreement to assist developing countries that are party to the Agreement.

11. The Legal Counsel noted, however, that several fisheries were still subject to unsustainable fishing practices, including overfishing, illegal, unreported and unregulated (IUU) fishing, and to the use of unselective fishing gear and techniques resulting in excessive by-catch and discards, and adverse impacts on marine ecosystems. This indicated that more could be done to ensure that the Agreement was effectively implemented, including increasing the number of Parties to the Agreement and addressing the obstacles that had prevented some States from becoming Parties, in order to improve the effectiveness of the Agreement.

D. Rules of Procedure

12. Stressing that the Review Conference should focus on matters of substance, the President urged delegates not to reiterate discussions on the rules of procedure, which he said, had been debated at length during the fifth round of Informal Consultations of States Parties to the Agreement. He reiterated that the Conference would be inclusive, and expressed the hope and expectation that the Conference would adopt its final report on the basis of general agreement. A vote would only occur if all efforts at achieving consensus failed.

13. Several non-Parties expressed their strong reservation in relation to certain provisions of the provisional rules of procedure (A/CONF.210/2006/6), noting that, in view of the objectives of the Conference as well as the letter and spirit of the Agreement, States Parties to the Agreement, non-Parties and other entities referred to in article 36 of the Agreement should participate in the Conference with equal rights. They also emphasized that only with broad participation in the Conference and wide support for its outcome would the Conference be able to further promote the effective implementation of the Agreement.

14. One State non-Party expressed dissatisfaction with the manner in which the rules of procedure had been discussed at the fifth round of Informal Consultations of States Parties to the Agreement, noting that few rules had actually been discussed while others, that also affected issues of substance, had not been debated. This delegation proposed substituting “States Parties” with “Participating States” in several rules. Another State non-Party, with the support of some other non-Parties, proposed that the Conference not adopt formally the rules of procedure and use them on a provisional basis instead, and focus on the adoption of decisions on substantive issues by consensus among all participating States.

15. Several States Parties to the Agreement stressed the need to refrain from re-opening discussions on this issue and recalled statements of confidence by the President and several States, at the closing session of the fifth round of Informal Consultations of States Parties to the Agreement, that there would not be any need to resort to voting during the Review Conference, because inclusive participation in a spirit of cooperation and understanding would prevail instead.

16. Upon a request for advice by the President as to which rules governed the adoption of the provisional rules of procedure by the Conference, a representative of the Office of the Legal Counsel indicated that, should participating States fail to reach consensus, the Conference should adopt the provisional rules of procedure on the basis of the rules of the convening
authority, which, in this case, is the Agreement, more specifically its article 36. He stated that States Parties were to interpret this article and determine the manner in which the rules should be adopted.

17. One delegation stressed the need to strike a balance between the practical aspects of the issue, including the need to secure broad participation for an effective implementation of the Agreement, and its legal aspects as outlined by the representative of the Office of the Legal Counsel.

18. The President proposed that the rules of procedure remain provisional and be used as such during the Conference, with the understanding that the Conference would proceed to the formal adoption of the provisional rules of procedure if and when necessary. The Conference agreed with the President’s proposal.

E. Adoption of the Agenda


F. Election of Officers other than the President

20. In accordance with rule 10 of the provisional rules of procedure and giving due consideration to geographic representation, the President invited nominations for five Vice-Presidents from States Parties to the Agreement and two Vice-Presidents from non-Parties, who, together with the President, would constitute the Bureau of the Review Conference, pursuant to rule 15 of the provisional rules of procedure.

21. The Conference elected Mr. Marcos Lourenço de Almeida (Brazil), Mr. Sainivalati S. Navoti (Fiji), Mr. Famoudou Magassouba (Guinea), Mr. Dmitry Gonchar (Russian Federation) and Mr. Fernando Curcio Ruigómez (Spain) as Vice-Presidents from among States Parties. Mr. Andrés Couve (Chile) and Mr. Liu Zheng (China) were elected as Vice-Presidents from among States non-Parties.

G. Organization of Work

22. The President introduced the proposed organization of work as contained in document A/CONF.210/2006/4, which was adopted by the Conference.

23. The Conference also established a Drafting Committee pursuant to rule 10, paragraph 2, of the provisional rules of procedure, chaired by Mr. Fernando Curcio (Spain), a member of the Bureau.

24. The President indicated that the Drafting Committee was entrusted with identifying and consolidating areas of general agreement following plenary discussions on the review and assessment as well as proposals for strengthening the effectiveness of the Agreement. The work would proceed on the basis of discussions on each cluster of issues as outlined in the organization of work. The results of the work of the drafting committee would then be submitted to the plenary for approval.

25. The Drafting Committee convened ten times to negotiate elements to be incorporated in the final report of the Review Conference, relating to the conservation and management of stocks, mechanisms for international cooperation and non-members, monitoring, control and
surveillance and enforcement, developing States and non-Parties and future reviews of the Agreement.

**H. Credentials of Representatives to the Conference**

26. In accordance with rule 8 of the provisional rules of procedure, on 23 May 2006, the Review Conference appointed a Credentials Committee of nine members from representatives of the following States Parties to the Agreement: Germany, India, Mauritius, Norway, Saint Lucia, South Africa, Sri Lanka, Ukraine, and Uruguay.

27. The Credentials Committee held two meetings, on 24 and 26 May 2006. It elected Mr. Amarakansa Hettiarachichi (Sri Lanka) as Chairperson and Mr. Patrick Jacobs (South Africa) as Vice-Chairperson. The Committee examined and accepted the credentials of representatives to the Review Conference from 97 participating States and the European Community.


**I. Presentation of the Report of the Fifth Round of Informal Consultations of States Parties to the Agreement**

29. The Conference took note of the report of the fifth round of Informal Consultations of States Parties to the Agreement (ICSP5/UNFSA/REP/INF.1) introduced by the President. The report had been prepared by the Chairman of the Informal Consultations with the support of the Secretariat.

**J. Consideration of the Report on the Status of the Assistance Fund**

30. The representative of the FAO presented the financial report on the status of the Assistance Fund under Part VII of the Agreement for the Implementation of the Provisions of UNCLOS (A/CONF.210/2006/2). He noted that contributions to the Fund had been received from the United States of America, Iceland and Norway. The first installment of the contribution from Canada had also been received. The total of contributions to date amounted to US $417,000.00. He said that two requests for travel assistance had been received in January 2006, and 10 requests for travel assistance had been received in total to attend the Review Conference. One request had been received from SEAFO, on behalf of two States, to allow their participation in the annual meetings of SEAFO. To date, US $65,000.00 had been used from the Assistance Fund. He advised that applications for travel assistance must be made at least one month in advance of the intended travel so as to ensure timely administrative processing of the request.

31. The Conference took note of the report presented by the FAO on the status of the Assistance Fund.

**III. Substantive Matters**

**A. General Statements**

32. Several delegations highlighted the importance of the Agreement, improvements in implementation of the Agreement and the growing number of States Parties to the Agreement. A number of non-Parties announced their intention to become States Parties in the near term. Some delegations stressed the fact that the Agreement had only entered into force recently and
needed to mature as countries were starting to incorporate its provisions into national laws and policies, highlighted the importance of the review process, and called for full implementation of existing international fishery-related instruments rather than creating new ones or amending existing ones.

33. Many delegations emphasized the importance of obtaining universal participation in the Agreement to ensure its effectiveness and that the Review Conference should be a catalyst to promote broader ratification. In this regard, several delegations highlighted that one of the objectives of the Conference was to address the challenges faced by some non-Parties.

34. A group of nine Latin American and Caribbean States\(^2\) presented a Declaration (A/CONF.210/2006/12), in which they underlined the issues that had prevented them from becoming party to the Agreement. These included issues related to the boarding and inspection procedures provided for in articles 21 (Subregional and regional cooperation in enforcement) and 22 (Basic procedures for boarding and inspection pursuant to article 21) of the Agreement, and the need to ensure that the provisions of the Agreement were not interpreted or applied contrary to the rights, obligations and interests of coastal States, as provided for under UNCLOS. The Declaration also stated that the review process should be conducted in accordance with article 4 of the Agreement on the relationship between the Agreement and UNCLOS, and that articles 5 (General principles), 6 (Application of the precautionary approach) and 7 (Compatibility of conservation and management measures) of the Agreement should be interpreted and applied in the context of and in a manner consistent with UNCLOS. In this respect, the application of article 7 on compatible measures should not compel coastal States to adopt any measures within areas under their national jurisdiction or take any action that would affect their sovereign rights in such areas. The Declaration further emphasized that fishing on the high seas should be in conformity with articles 63, 64, 116 and other provisions of Part VII of UNCLOS. It also proposed that the outcome of the Review Conference include these remarks as interpretative principles.

35. A number of delegations called for the adoption of technical annexes to the Agreement in order to address such issues as high seas bottom trawling and compensation for damages resulting from boarding and inspection carried out contrary to international law.

36. One observer stressed the need to maintain the integrity of the regime provided for in the Agreement and avoid adopting measures that were weaker than its current provisions, in particular with regard to enforcement and the compatibility of measures.

37. Other observers also highlighted the interests of artisanal fishers and the sustainability of their fishing methods, and the need to transform RFMOs into regional ecosystem management organizations, for which international management guidelines and time-bound goals shall be applicable.

B. Review and Assessment of the Adequacy of the Provisions of the Agreement and Means of Strengthening the Substance and Methods of their Implementation

38. The President indicated that the organization of work adopted by the Conference outlined three framework questions, under which discussions on the assessment of the effectiveness of the Agreement should be conducted and requested delegations to organize their interventions on the basis of the following questions: 1) in which areas is implementation of the Agreement
proceeding generally well? 2) in which areas is implementation of the Agreement at an early stage or where has there been little progress in implementation? 3) what means could be proposed to strengthen the substance and methods of implementation of the Agreement? The document also identified four separate clusters of issues, upon which the discussions on this agenda item were to be organized:

1) Conservation and management of stocks;
2) Mechanisms for international cooperation and non-members;
3) Monitoring control and surveillance, and compliance and enforcement; and
4) Developing States and non-Parties.

39. On the basis of discussions on these clusters in plenary (sub-sections 1 to 5 below), the Drafting Committee considered draft elements of the final report of the Conference (Annex).

1. Consideration of elements relating to the conservation and management of stocks

40. The President invited delegations to express their views on the elements relating to conservation and management of stocks as outlined in the Elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

41. Several delegations highlighted the progress and advancement achieved for the sustainable management of different species since the adoption of the Agreement, and stated the importance of the Agreement in ensuring the long-term sustainability of fisheries resources and thus the need for its improved implementation. Several delegations stressed that ensuring the sustainability of fish as a resource was of utmost priority owing to the fact that their culture, health, economies and development were dependent upon the proper conservation and management of shared fish stocks.

42. With regard to the effect of the Agreement on non-Parties, many participants observed that the standards of conservation and management set forth in the Agreement had been widely disseminated and implemented at the global, regional and national levels. It also pointed out that the Agreement had influenced fishing operations in the high seas by States and had guided RFMOs to incorporate the standards of the Agreement into their regulations.

(a) Adoption of measures

43. Several delegations acknowledged the importance and the need to adopt measures to implement the precautionary and ecosystem approaches, and stressed that the lack of scientific information should not prevent the adoption and implementation of necessary measures. Some were of the view that the mandate and capacity of RFMOs should be expanded beyond target species, from a single to multi-species approach, in order to incorporate ecosystem considerations into their management decisions. One delegation stated that criteria should also be developed to assist management bodies in taking decisions that reflect these approaches. It also pointed out that if the objectives of the Agreement were to be realized, the precautionary approach should be applied widely, both within and beyond areas of national jurisdiction.

44. The importance of science for conservation and management decisions was stressed. However, it was pointed out that even in cases where there was scientific advice, States and RFMOs had taken decisions that did not always take into account such advice. Furthermore,
where measures had been adopted, compliance with those measures by members and non-members of RFMOs had been problematic.

45. Several States, both Parties and non-Parties, presented the measures that they had adopted to implement the Agreement. Such measures comprised both measures adopted through national legislation as well as those adopted within RFMOs. They included the establishment of total allowable catches for tuna in the EEZ, measures to manage fishing capacity and effort, national observers programmes and programmes for boarding and inspections, measures to implement the ecosystem approach, measures for the licensing and authorization of vessels, measures to set up monitoring systems and research centers, and measures for port States, in particular to combat IUU fishing. Developments in the Caribbean region were described, with a special emphasis on the difficulties related to the lack of resources. Nonetheless, a number of States in the region indicated they had taken steps to implement the Agreement. In particular, landing sites had been designated to gather official data for reporting purposes, and registration and licensing systems for vessels had been improved. Reporting to RFMOs had also increased, alongside the use of vessel monitoring systems (VMS) at the regional level.

46. A number of developing States, including small islands developing States, underlined the need for more focused assistance in the development of conservation and management measures. It was also noted that increased assistance would encourage further ratifications. A number of non-Parties indicated that although they had not yet joined the Agreement, they had adopted measures to implement its conservation and management provisions. One non-Party reported that it had implemented in practice the provisions concerning the conservation and management of stocks through RFMOs and had developed aquaculture as an alternative to fishing. Timely interim measures to guarantee the conservation of stocks on the high seas were called for.

47. A number of delegations noted that coastal States and States whose nationals fish for straddling fish stocks and highly migratory fish stocks have an obligation to cooperate to agree upon compatible measures for the conservation of such stocks both within and beyond the areas of national jurisdiction. Some non-Parties stated that all States had the duty to respect the principle of compatibility contained in article 7 of the Agreement, in order to ensure that measures adopted by distant water fishing nations were compatible with those adopted by coastal States in areas under their national jurisdiction. In particular, measures for managing fisheries in the high seas should respect the rights of coastal States, as provided for in UNCLOS. It was stressed that the rights of landlocked States should also be taken into account.

48. In addition, observers from a number of RFMOs presented the conservation and management measures adopted within their respective organizations to implement the Agreement. The following issues were identified as among the challenges faced in implementing the Agreement: adoption of measures based on the precautionary approach, ensuring that the basis of decision-making was the best available science, agreeing on transparent deliberations, effectively monitoring and enforcing agreed measures, and establishing effective reporting systems. One RFMO pointed out that although the measures that it had adopted in relation to some stocks had been successful, measures for other stocks had not prevented over-fishing.
(b) Overfishing and capacity management

49. It was stated that there was a need to regulate capacity commensurate with the resources available. This would also help addressing the issue of IUU fishing. States which had adopted measures for reducing capacity urged other States to do the same. One delegation proposed that organizations and arrangements responsible for straddling fish stocks develop plans that would reduce levels of fishing capacity by 2012, and organizations responsible for highly migratory fish stocks should, by 2007, adopt a plan for global capacity management. Several delegations underlined that the Review Conference should not aim at establishing an overall policy for capacity management, as this was the task of the FAO. They also noted that RFMOs had a particularly important role in this context, in order to ensure proper management of high seas stocks and adopt effective solutions that would also address the issue of capacity. RFMOs were invited to cooperate amongst themselves to exchange experiences and best practices regarding regional measures for capacity management. Japan informed the Conference that it would host a joint meeting of the five RFMOs regulating tuna fisheries in January 2007 to review cooperation among RFMOs. This meeting was identified as a forum to further discuss the issues of overfishing and capacity management.

50. A number of developing countries stressed that any limitation to reduce capacity within RFMOs must not be detrimental to States where fisheries was still being developed, as this would perpetuate the situation of inequality in favor of traditional fishing countries.

51. Other delegations emphasized the importance of eliminating fisheries subsidies by developed States in order to reduce overcapacity, and indicated that the Review Conference should call on States to implement the International Plan of Action for reducing fishing capacity.

52. One RFMO indicated that, as there were too many vessels operating in its convention area, it had adopted a plan for regional management of fishing capacity. The plan set a target for capacity and provided that only vessels registered with the organization were authorized to fish in the region. New vessels could enter the organization’s register, only when vessels of equal size were removed. This management of capacity had provided a restraint on the growth of the fleet, but had not met the goal of reduction.

53. An NGO stated that commitment to eliminating overcapacity already existed, and it should be implemented including through a scrapping programme.

(c) Effects of fishing on the marine environment

54. Many participants stated that the protection of sensitive marine ecosystems, including key habitats, is of paramount concern, and suggested that States and RFMOs be encouraged to establish scientific criteria on the objectives and management of marine protected areas for fisheries purposes. Another delegation stressed that, according to articles 5 (General principles) and 6 (Application of the precautionary approach) of the Agreement, States were under the obligation to promote the protection of ecosystems. It was noted that these articles should also be reflected in the mandates and practices of RFMOs.

55. A number of delegations noted that articles 5 and 6 of the Agreement were already being implemented to some degree. For example, one State indicated that it had declared its EEZ a whale sanctuary. However, it was stressed that more should be done, including on the
application of an ecosystem approach. In this regard, a State Party proposed the development of a technical annex to the Agreement, which would provide for guidelines for the application of ecosystem approaches to fisheries management in the conservation and management of straddling fish stocks and highly migratory fish stocks. Other delegations underlined the need for a global approach for the implementation of the ecosystem approach.

56. The use of fishing practices that might impact sensitive environments, such as bottom trawling, was highlighted by some delegations as an issue of particular concern. One delegation noted that this issue was dealt with by the General Assembly and should not be the focus of the Review Conference. Another delegation highlighted the need for precautionary action to address unregulated bottom trawling, and proposed, for areas not covered by any RFMO, an interim prohibition on bottom trawling until an RFMO was established and adopted effective conservation and management measures. For areas within the competence of RFMOs, it was proposed that such RFMOs should be allowed some time to institute effective conservation and management measures on their own. A moratorium for bottom trawling in the high seas was supported by another delegation.

57. One delegation noted that the Secretary-General’s report did not contain any references to measures taken by RFMOs to address the protection of marine biodiversity, and suggested that RFMOs consider measures such as area closures.

58. As for waste, discards and catch by abandoned gear, one delegation noted that measures to address such practice could improve the status of fish stocks and should be welcomed by the Conference as a contribution to the implementation of the Agreement.

59. One observer pointed out that, in accordance with the recommendations of the World Summit on Sustainable Development (WSSD), networks of marine protected areas (MPAs) should be established, for example by setting aside pilot areas. Another observer stressed that the destructiveness of some fishing practices needed to be addressed, including, in some cases, through prohibiting them. He noted that the Conference should take concrete measures with regard to the implementation of ecosystem management. An observer further proposed that users of high seas resources demonstrate that their activities did not harm the environment, for example by undertaking environmental impact assessments. Furthermore, new and exploratory fisheries should be prohibited until their effect on the environment had been assessed. It was stated that high-seas bottom trawling was a clear example of the failure to adopt measures required by articles 5 through 7 of the Agreement. This was cited as the reason why a moratorium on high-seas bottom trawling was essential until concrete and effective measures were in place to conserve vulnerable deep-sea ecosystems.

(d) Fisheries not regulated by an RFMO

60. The central role of RFMOs in the implementation of the Agreement was noted by most delegations. The establishment of new RFMOs where none existed before, for example WCPFC, SEAFO and SIOFA and the on-going efforts to establish new RFMOs, for example in the South Pacific and in the North West Pacific, were welcomed. Furthermore, the need to strengthen and modernize the mandates of existing RFMOs was noted, in particular geographic and species coverage had to be addressed. Several delegations highlighted the need to strengthen international cooperation and institutions that worked on a regional basis and to increase the coverage of the oceans by the RFMOs, in order to ensure that their global coverage
encompassed not only the conservation and management of high seas fisheries resources but also to manage interactions between fisheries and the environment as a whole.

61. The Republic of Korea informed the Conference that, with Japan and the Russian Federation, it is participating in a regional initiative to establish a new RFMO in the North Western Pacific Ocean to regulate bottom trawl fishing, including through the development of interim measures for the management of bottom trawling and for the conservation of vulnerable marine ecosystems, and stated that the three States had agreed to cooperate in the compilation, analysis and exchange of data on bottom trawling in this region.

62. One delegation stated that it did not favor the creation of new RFMOs due to the financial burden imposed on their members. However, as the Southwest Atlantic Ocean was not covered by an RFMO, there was a will to discuss the creation of an RFMO for this area. It was also stated that the establishment of new RFMOs should not be detrimental to States where fisheries were at the early stages of their development.

63. Another delegation recommended the establishment of an RFMO to cover the North Pacific Ocean, and stated that, in the meantime, there was a need to adopt interim measures to protect that area from destructive fishing practices.

64. Some delegations stated that the general principles of the Agreement should be applied also to discrete fish stocks in the high seas. Another delegation stated that it would support the development of FAO technical guidelines, in consultation with other relevant IGOs, for conserving and managing high seas discrete stocks and which incorporate the provisions of the Agreement and provisions from other instruments regarding the precautionary approach, biological vulnerabilities and data collection. Another delegation also stated that, as RFMOs were competent to manage high seas stocks within their geographical coverage, their work could be facilitated by requesting the FAO to conduct a technical study of identification of discrete stocks around the world with a view to developing guidelines for the application of the Agreement’s principles to discrete stocks.

65. One observer noted that several RFMOs which pre-dated the Agreement had yet to bring their mandates into line with the provisions of the Agreement. It supported efforts to modernize RFMOs to address gaps in regional fisheries governance, including for discrete stocks in the high seas. In relation to discrete stocks, another observer stated that it was not clear what the benefit of establishing FAO guidelines for management of high-seas discrete fish stocks would be. The Conference should instead agree to apply the provisions of the Agreement to all stocks.

(e) Data collection and sharing

66. Several delegations stated that the collection and sharing of data was a key element, both for the adoption of conservation and management measures and in terms of transparency of management. Countries should, therefore, provide full and comprehensive data to the FAO and all members of RFMOs should provide accurate and timely data on their activities to ensure that management measures can be based on scientific advice that is generated by the best possible data. At the same time, it was noted that the lack of capacity in developing countries to collect data had to be addressed.

67. One delegation stated that as the quality of the information and data available affected stock assessments, incomplete data increased the need for precaution. It was further stated that,
as all RFMOs had adopted data collection and reporting measures to conform with the Agreement’s minimum requirements, it would be valuable to call on each RFMO Secretariat to conduct an annual audit of data submitted by members for accuracy, timeliness and completeness. It was also suggested that RFMOs could require their members to ensure that they were meeting compulsory reporting requirements. Those members failing to do so would be required to prepare plans of actions to rectify the situation or face sanctions.

68. One delegation stated that monitoring was important but posed particular challenges, particularly at the national level, where effective legislative action had to be taken to set up efficient monitoring systems and research centres. In order to ensure adequate data on fish stocks, permanent surveillance was necessary, which required substantive resources that were not always available to developing countries. Regional and subregional cooperation could assist in this regard, through the establishment of joint research missions.

69. One RFMO also reported that it was undertaking data collection and sharing through creative arrangements in cooperation with other organizations. Existing data gaps were associated with inadequate data submissions, including from developing members, and also with respect to IUU fishing. Another RFMO reported that it had one of the most comprehensive data sets on highly migratory fish stocks, and it had provided such data to Governments and relevant organizations. It had published advice regarding some tuna species, including the status of the stocks of tuna and consideration of the effects of fishing on the marine ecosystem.

2. Consideration of elements relating to mechanisms for international cooperation and non-members

70. The President invited statements on elements relating to mechanisms for international cooperation and non-members as outlined in the document containing Elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5).

71. One delegation noted that, besides RFMOs, there were other mechanisms for international cooperation, for example in the context of the International Agreement on the Conservation of Albatrosses and Petrels and action taken by some States to address the issue of noise pollution. The importance of considering wider contexts for cooperation was underlined, in order to be successful in the conservation of oceans, as an essential element in the implementation of the Agreement. Another delegation highlighted bilateral cooperation as an important mechanism for international cooperation. In this regard, a non-Party noted that, as required under article 118 of UNCLOS, international cooperation should occur even where no RFMOs existed, in order to ensure conservation and sustainable use of fisheries resources both in the high seas and in areas under the jurisdiction of coastal States.

(a) Integrity of RFMO regimes

72. Many delegations re-iterated that RFMOs were at the centre of the implementation of the conservation and sustainable management measures contained in the Agreement. It was noted that the effectiveness of the Agreement depended on the effectiveness, coverage, and membership of RFMOs, as well as the degree of cooperation among them. As a consequence, action should be taken to fill gaps in coverage by RFMOs, both in terms of geographic and species coverage. RFMOs should also modernize their mandates, increase participation of interested States, and establish accountability mechanisms.
73. The importance of achieving harmonization of measures to ensure consistency was also highlighted. To this end, several delegations recommended increased cooperation among RFMOs. One delegation stated that cooperation was also needed among international agencies that provide the policy foundation, advice and tools that were part of, or affected, fisheries governance.

74. Japan informed the Conference that the joint meeting of the five RFMOs regulating tuna fisheries, to be held in January 2007, was expected to adopt an action plan to coordinate the conservation and management of tuna by these RFMOs, including through making measures consistent across RFMOs. One delegation also suggested the consideration of a similar initiative for RFMOs with the competence to manage straddling fish stocks.

75. One observer noted that RFMOs played an effective functional role and should provide, among others, the best available information on the number of States and vessels engaged in unregulated fishing and other relevant statistics to serve as a basis for measuring progress.

(b) Fishing activity by non-members

76. Several delegations stressed the duty to cooperate in the conservation and management of straddling fish stocks and highly migratory fish stocks. Many delegations emphasized that members of RFMOs should continue to encourage non-member States and entities fishing in areas under the competence of these RFMOs to participate in their activities by immediately joining or agreeing to apply the conservation and management measures established by them. Non-members of RFMOs could cooperate, either through a formal commitment to apply decisions of RFMOs or alternatively, by seeking cooperating status with such RFMOs. It was also added that RFMOs should subject the status of cooperating non-member to the applicant’s record of compliance with RFMO measures, its contribution to the organization, including the provision of data, and its efforts to become party within a reasonable timeframe, where possible. Non-cooperating States should otherwise abstain from fishing in the Convention area. One delegation noted that the lack of cooperation on the part of non-members undermined cooperation mechanisms and each RFMO should address this issue on the basis of international law.

77. Several delegations also stressed that ensuring an open and participatory approach within RFMOs was an important element of the obligation to cooperate under the Agreement, in order to allow all States and fisheries entities to effectively participate in the work of the RFMOs. States and fisheries entities should not be prevented from taking part in RFMOs’ activities for political or legal reasons.

78. A number of delegations further emphasized that there remained cases where States were unwilling to join RFMOs or to apply adopted conservation and management measures in respect of their vessels, due to the lack of incentives for them to join RFMOs. In particular, it was pointed out by some delegations that the allocation of quotas would constitute an incentive for non-members to participate in the work of RFMOs.

79. Several delegations drew attention to the importance of commercial or market measures. In particular, one delegation indicated that market measures could be used as a tool to encourage States to join RFMOs. Examples of how market measures had already been used to this end were presented. Several delegations highlighted the importance of adopting market
measures in compliance with international law, in particular with World Trade Organization (WTO) instruments.

80. In addition, several delegations noted that a number of developing States lacked the means to join RFMOs and implement their conservation measures. Sharing technical knowledge and expertise, the provision of assistance and the enhancement of enforcement capabilities were therefore fundamental to encourage their participation in RFMOs. It was emphasized that the financial implications of participating in RFMOs and the uneven allocation of fishing rights between developing and developed States discouraged some developing States from joining RFMOs. In this connection, some delegations expressed dissatisfaction with the allocation criterion based on historical catches, as it favored States with well established industrial-size fleets and hampered the development of States with emerging fisheries. One delegation underlined that this situation was not in conformity with articles 116 (Right to fish on the high seas) and 119 (Conservation of the living resources of the high seas) of UNCLOS as well as article 25 (Forms of cooperation with developing States) of the Agreement. ICCAT was mentioned as an example of RFMO that had implemented a system of allocation that incorporated factors beyond historical catches.

81. Several delegations stated that it was essential to deter IUU fishing, as it undermined the work of RFMOs. In this regard, the issue of flags of convenience, including the phenomenon of re-flagging, and the need to clarify the concept of the “genuine link”, were considered to be important by a number of delegations. Several delegations supported the use of positive and negative vessel lists, provided that such lists were used in a transparent and consistent manner. One delegation recommended that RFMOs use full catch documentation systems in addition to measures already taken to deter IUU fishing.

82. Other delegations encouraged the use by RFMOs of vessel registers and other measures to exclude fishing activities by vessels non-members of RFMOs. It was also emphasized that cooperation was needed both among organizations and among States, for example through the International MCS Network. The need to adopt port States measures, including the need to agree on a definition of “ports of convenience”, were also underlined.

83. Most RFMO representatives recognized that fishing by non-members often occurred for a number of reasons. The representative of one RFMO cited the example of those States which, because of the low level of their catch, cannot become members. It was noted that some of these States nevertheless took into account conservation and management measures established by the organization, and reported their catch. The RFMO had also granted fishing rights to some entities with the status of cooperating non-members. This status was reviewed every year and cooperating non-members were required to conform to management measures adopted by members.

84. One observer noted that some RFMOs had made progress towards instituting mechanisms for apprehending contravening vessels under flags of non-members States. In relation to IUU fishing, it was pointed out that since IUU fishing was a global problem mostly due to the existence of flags of non-compliance, only a global mechanism could be appropriate. To this end, the development of a new implementing agreement to deal with IUU fishing, based on the precautionary principle, ecosystem-based management approaches and prior environmental impact assessments, was recommended.
(c) Functioning of RFMOs

85. It was widely agreed that the improvement of RFMOs’ functioning and alignment of their conventions and adopted measures with the Agreement’s standards should be a priority. In particular, with respect to decision-making procedures, several delegations observed that the “opting-out” procedure undermined RFMO credibility, effectiveness and conservation measures. One delegation recommended that the Conference urge RFMOs to ensure that “post opting-out” behaviour be constrained by (i) rules preventing opting-out parties from undermining conservation, (ii) clear processes for dispute resolution; and (iii) a precautionary regime applicable in the interim. Another delegation stated that opting-out members could be made to provide a written explanation for their reasons to opt-out and specify the alternative measures they intended to implement. Attention was also drawn to the fact that some RFMOs do not allow opt-outs.

86. Several delegations proposed that the Conference indicate how RFMOs could be modernized, taking into account the progress made in recent fisheries instruments such as the Agreement. A number of delegations welcomed measures taken by specific RFMOs to modernize their mandates, and recommended that the Conference call on all RFMOs to undertake a similar process, as a matter of the highest urgency. Several States Parties also noted that interim measures could be adopted to implement modern fisheries policies, while new or updated conventions and agreements were undergoing the process leading to their entry into force.

87. It was further underlined that in the process of modernization, priorities should include the implementation of precautionary and ecosystem-based approaches to fisheries management, decision-making that facilitates long-term conservation and sustainable use of fish stocks, processes to ensure the implementation of decisions, the establishment of effective monitoring, control and surveillance (MCS) regimes and the improvement of linkages between governing bodies and scientific advisory bodies. Furthermore, they suggested that States should work within RFMOs to establish or strengthen MCS regimes, including through joint inspections, dissemination of information, providing for regular compliance review mechanisms and developing observer programmes to collect data, compliance monitoring, and reporting on infringements. It was further suggested that the Conference should address the issue of sanctions, for example by developing criteria for sanctions, keeping in mind that sanctions were a sovereign issue.

88. Several delegations called for a process to review the performance of RFMOs. One delegation pointed out that RFMO reviews could be carried out on the basis of different approaches, either through a self-assessment or through an external review process. A suggestion that RFMOs could initiate periodic performance assessments was supported by many delegations. One delegation called for annual reviews of RFMOs’ performance. Examples of performance review already on-going within some RFMOs, including NEAFC and ICCAT, were highlighted as examples for other RFMOs to follow. It was stated that transparency and independence were critical factors in such reviews. One delegation added that the Review Conference could provide specific guidance for such reviews, which should include
independent validation and external evaluation on the basis of a set of criteria to be agreed upon, in order to ensure transparency and accountability. One delegation indicated that it would request that RFMOs to which it was a member to conclude initial self-assessments no later than July 2007. The recommendations of the High Seas Task Force (HSTF), which include the development of an RFMO model, were considered as a useful initiative that, in the view of some delegations, could be used as a benchmark by all RFMOs. It was stated that RFMOs should report the results of their assessments and any actions taken to remedy deficiencies to the FAO or to future meetings of the Review Conference on the Agreement.

89. In addition, adequate funding and timely resources allocated to RFMOs were considered essential and a number of delegations noted that RFMOs could only be as effective as States allowed them to be. It was also stated that the low levels of participation in some RFMOs was problematic, as it did not allow these organizations to achieve their objectives.

90. It was also noted that some RFMOs have instituted cooperative mechanisms, which needed to be strengthened and expanded. For example, the Fishery Resources Monitoring System (FIRMS) was described as a partnership between RFMOs and the FAO to provide high quality information on status and trends of fisheries on a uniform basis. FIRMS was also in the process of establishing a global reporting system that could provide useful input for policy decisions.

91. One delegation noted that although advances in providing for transparency in the work and decisions of RFMOs had been made in recent years, opportunities for participation by IGOs or NGOs remained limited or unduly burdensome in some cases, as some RFMOs maintained restrictive application procedures. This delegation was of the view that participation of IGOs and NGOs would inject important expertise into the work of RFMOs. It thus suggested that all RFMOs should undertake a concerted effort to provide for meaningful participation of IGOs and NGOs in all their meetings.

(e) Participatory rights

92. One delegation stated that it was encouraged by the level of participation in RFMOs. In this regard, several delegations encouraged the participation by all interested States in RFMOs as a way to ensure international cooperation. Such participation could take place in various ways: by becoming a member of the RFMO; by formally committing to applying the measures adopted by the RFMO; or by becoming a cooperating non-member. It was further stated that, in order to participate in an RFMO, States had to demonstrate a real interest in the fishery coupled with effective control over their ships.

93. Several delegations underlined that while Article 10(b) and 11 of the Agreement provided the framework for participatory rights, further work may be needed to develop more detailed criteria for participatory rights. A number of delegations pointed out that particular attention should be paid to the effective participation in the work of the RFMO by States with limited capacity. Some delegations emphasized that presently participatory rights were based on historical catches and needed to be improved in order to ensure a more equitable distribution of the resources. In particular, it was noted that this raised a problem for developing countries, which, in the past, had participated minimally in fishing activities, but should now be granted equitable participatory rights.
94. In this regard, several delegations proposed the granting of fishing rights to developing States by diminishing their own quotas. It was made clear, though, that this proposal should be implemented in good faith and not used to grant fishing rights to vessels from other States, which would not have been otherwise granted fishing allocations by their original flag States. However, decisions on the allocation of fishing opportunities should mainly be based on scientific advice and should not be guided solely by economic concerns. Thus, the early development of precautionary measures, both for catch and effort limits as well as sustainable fishing capacity levels, along with allocation criteria that took into account the rights and aspirations of developing countries, was critical. A number of delegations also stated that it was important to enhance transparency and predictability regarding RFMO regulations relating to allocations.

95. A number of delegations also noted that overfishing was, at least in part, due to the inability of RFMOs to agree on the allocation of quotas. One delegation suggested that case studies may be useful to this end. Some delegations also indicated that greater attention should be paid to incentives as a means to encourage a greater degree of participation to and compliance with the work of RFMOs. In this regard, participatory rights represented a form of incentive to cooperate.

3. Consideration of elements relating to monitoring, control and surveillance, and compliance and enforcement

96. The President invited delegations to express their views on elements relating to monitoring, control and surveillance, and compliance and enforcement as outlined in the Elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He drew the attention of the Conference to the fact that even if sound measures were adopted for the conservation and management of straddling and highly migratory fish stocks, sustainable fisheries could not be achieved without compliance with those measures. Highlighting developments in this area since the adoption of the Agreement, he called upon delegations to identify what additional actions could be undertaken to address, in particular, IUU fishing, both within areas under national jurisdiction and on the high seas, by non-members as well as members of RFMOs.

97. MCS and enforcement were considered by delegations as critical to the effectiveness of the provisions of the Agreement. In this connection, it was noted that MCS constituted a pre-condition to achieving the objective of sustainability of fish stocks enshrined in the Agreement. A number of delegations also noted that the integrity of the RFMO regimes depended on effective compliance with their decisions, including through cooperation and adequate flag States control. Some delegations stressed that all MCS activities and enforcement should be carried out in accordance with international law, in particular UNCLOS. One delegation underlined the integrated nature of MCS, and compliance and enforcement mechanisms, which required a strong integration of flag State, coastal State, port State and market State responsibilities for measures to be successful. This delegation also stressed the need to develop incentives to encourage compliant behavior.

98. Many delegations highlighted IUU fishing as an issue that required urgent attention. In this regard, they stressed the need for the international community to strengthen regulatory
measures, extend the coverage of RFMOs and improve enforcement capabilities to fight IUU activities.

99. Several delegations outlined the measures that they had adopted in the field of MCS and compliance and enforcement mechanisms to implement relevant provisions of the Agreement, individually, on a bilateral basis, or through RFMOs. Several delegations indicated that although they were not party to the Agreement, their domestic legislation included measures that addressed compliance and enforcement and reflected the provisions of the Agreement and/or the FAO Compliance Agreement and the FAO Model Scheme on Port State Control. Observers from a number of RFMOs reported on the measures adopted by their respective organizations.

(a) Implementation of Flag State Duties

100. Many delegations stressed the important role of flag States for the effective implementation of the Agreement. They also drew attention to the threat posed, both to fisheries and developing coastal States, in terms of loss of revenue, by lack of will or capacity of flag States to properly ensure compliance by vessels flying their flag with the obligations imposed upon them by the Agreement and other relevant international instruments. In this regard, it was emphasized that flag States must also ensure compliance with subregional, regional and global conservation measures. One delegation suggested that flag States that were unable to comply with their obligations should not be allowed to be flag States. Another delegation stressed that all States have the right to fish in the high seas pursuant to UNCLOS, but that this right was conditional upon compliance by their nationals with measures for the conservation of living resources in the high seas adopted through bilateral or multilateral cooperation, including through RFMOs. It also expressed deep concern over the absence of cooperation with coastal States to address illegal activities of vessels operating on the high seas areas adjacent to the EEZ of coastal States and not covered by an RFMO.

101. Other delegations reiterated the need to better define the obligations of flag States and the “genuine link”, including by addressing the problems raised by the use of flags of convenience. Attention was drawn to the guidelines of the High Seas Task Force on flag State performance with respect to high seas fishing vessels. It was suggested that more detailed guidelines on flag State performance could be based on the requirements for flag State responsibilities set out in the FAO International Plan of Action on IUU Fishing, and that an assessment of the legislation of States be done to determine whether they have enacted provisions requiring vessels flying their flag not to operate with respect to areas or fisheries governed by RFMOs of which such States are not members. One delegation suggested that access agreements could include obligations for flag States to cooperate with coastal States with regard to monitoring, control and surveillance.

102. One delegation urged a wider application of the mechanism, provided for in the Agreement, that allows States that were members of an RFMO to board and inspect fishing vessels that operate in areas under the competence of that RFMO. Several States Parties noted that the boarding and inspection provisions in the Agreement were a central part of the Agreement and that those reflected a careful balance between the interests of the coastal state and distant water fishing nations. One delegation suggested that RFMOs should ensure that they have a sufficient inspection and boarding regime, and that safeguards be developed against
the abuse of rights. One delegation stated that the concurrent operations of both legitimate and illegitimate vessels made it difficult for authorities to distinguish between these two types of operations and thus to board and inspect vessels in conformity with international law. In this regard, several delegations drew attention to the availability of effective alternative mechanisms to the boarding and inspection procedures provided for in the Agreement. They stressed that boarding and inspection could result in the use of force, may be carried out contrary to international law, and therefore should only be used with the consent of flag States. These delegations called for support within RFMOs for the development of such alternative mechanisms. Some delegations noted that safeguards were already contained in the Agreement to address concerns regarding boarding and inspection.

103. A number of delegations pointed out that the issue of flag State implementation does not only arise in connection with fishing vessels, but also with support vessels utilized for transshipment and refueling operations. The need to regulate the activities of support vessels within the area of competence of RFMOs was underlined. One delegation drew attention to the need for States to also regulate the activities of their nationals and companies incorporated under their jurisdiction as an important complement to flag State and port State jurisdiction. In this connection, the case of some RFMOs that prohibit their members from flagging or engaging in fishing operations with vessels that have been included in IUU lists was highlighted. It was suggested that States should prohibit their nationals from engaging in activities with such vessels. A number of delegations also suggested that States could adopt measures against the illegal activities of beneficial owners of the vessels flying their flag.

(b) Investigation, Penalization for Violations

104. A number of delegations informed the Conference that, for the purpose of monitoring fishing activities carried out by all licensed fishing vessels, VMS have been used, the data of which was often cross-checked with that gathered through physical inspection. One delegation proposed ensuring that all vessels capable of fishing on the high seas carry VMS no later than 2008. Several delegations called for dual function to be given to observer schemes as an effective tool through which scientific data could be collected and compliance ensured. The introduction of mandatory satellite-based VMS on all vessels fishing within an RFMO’s area was identified as an effective step in implementing MCS.

105. Several delegations drew attention to the fact that sanctions needed to be significant, not just a cost of operation, in order to act as effective deterrents to non-compliance. For this purpose the need to develop guidelines for sanctions was underlined, with the recognition that the application of sanctions remained a sovereign issue. Judicial cooperation and periodic evaluation of sanctions were also highlighted as appropriate means for improved investigation and sanctioning. It was further noted that flag States possess the primary jurisdiction to impose sanctions effectively. One delegation stated that, in cases where flag States were unwilling to take action or failed implement their duties, inspecting States could take action to sanction illegal activities. Another delegation suggested that the use of compulsory indication of origin of fish and fish products could play an important role in deterring illegal activities, including by restricting the marketing of products obtained in violation of conservation and management measures.
106. One observer noted that the unique nature of high seas fisheries, including their remoteness, required enhanced regulatory regimes and mechanisms that went beyond the traditional approaches in place in other areas and for other maritime activities. Sanctions could also be deployed against the service industry, such as insurance and finance, which enabled illegal fishing practices to occur.

(c) Use of Port State Measures

107. Delegations emphasized that the role of port States in inspecting incoming fishing vessels to ensure that they were not in violation of international conservation and management measures was a critical aspect for the successful implementation of the Agreement. One delegation noted that profits from IUU fishing depend on the possibility of access to markets through landing in ports. Several delegations stressed the need to develop measures to monitor marketed fish to ensure that no fish caught in contravention of conservation and management measures was sold. RFMOs were urged to adopt systems to monitor landings of fish, as well as inspections and regulation of transshipments, including through agreed upon import and trade prohibition schemes consistent with international law, such as the electronic catch documentation scheme adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

108. Many delegations called for more extensive and coordinated efforts to adopt and implement port State measures, in compliance with article 23 of the Agreement. Support was expressed for the development of an electronic database of port State measures. A number of delegations called for the development of international standards and guidelines to prevent the emergence of “ports of convenience” resulting from the existence of weaker regimes in some port States. Support was expressed for a global legally binding instrument on port State measures as a necessary step against “ports of convenience”. In this connection the FAO Model Scheme on Port State Control was considered as the international minimum standard for port State control and a necessary reference for the development of a global instrument. One delegation stated that standards for port State measures should be agreed in the context of RFMOs. Another delegation cautioned against the development of a global instrument that would reflect a uniform approach, noting that such instruments usually entailed agreement on the minimal common denominator and that securing adherence to such instruments was often challenging. One delegation stressed that the Law of the Sea Convention, in particular article 11, provides for the sovereignty of port States over their port terminals, which entails full discretion of that State, including the possibility to restrict the use of its ports by foreign vessels when these are engaged in activities that are incompatible with domestic measures.

109. The observer from the FAO outlined developments regarding the FAO Model Scheme, including its endorsement by the United Nations General Assembly and several RFMOs as the basis for development of port State measures at the regional and national levels. He also highlighted capacity-building programmes undertaken to reinforce States’ abilities to combat IUU fishing and implement effective port State measures. Several RFMOs informed the Conference of some of their measures and initiatives related to port State measures, particularly with a view to combating IUU fishing. In this regard, one RFMO reported that it required port States members to report to its Secretariat the results of all inspections carried out on foreign vessels.
110. The observer from an NGO called on the Conference to adopt a specific action plan which would include binding port State measures, interim measures, in particular against IUU fishing of cod fish, and the adoption of new funding for States which lack capacity.

(d) International Cooperation

111. Many delegations stressed that the Agreement represented a solid framework to foster regional and international cooperation for MCS activities. Notable improvements were noted in this regard, but the persistence of significant IUU fishing indicated that further steps should be taken, in particular in the areas of VMS, observer programmes, port State measures and catch reporting and verification. Several delegations stressed the need for adequate control systems within RFMOs. Greater coordination between RFMOs was also called for, in particular to ensure the establishment of compatible MCS and compliance and enforcement measures such as vessel registers, centralized regional VMS and harmonization of sanctions and penalties. The establishment of a regional observer programme was also highlighted. Several delegations recommended better collaborative actions to address transshipment, including through RFMOs. Several other delegations called for a ban on this practice at sea and stricter controls in ports.

112. A number of delegations described projects of international cooperation such as the voluntary MCS Network, the strengthening and development of which was proposed, or the Pilot Project for Monitoring, Control and Surveillance, implemented through the Indian Ocean Commission (IOC). It was recognized that information on vessels believed to have engaged in IUU fishing remained scattered. One delegation highlighted the benefits of joint inspection and the need to collect and share critical information in order to combat IUU fishing, including through the development of a global database of information on reliability and fishing history of specific vessels. Another delegation proposed developing a global register of fishing vessels, including refrigerated transport and supply vessels, that would incorporate all information on beneficial ownership. Other suggestions included the establishment of a registry of vessels that would meet minimum standards for fishing in the high seas as well as a blacklist of vessels and their flags in order to avoid reflagging. The observer from one RFMO reported on cooperative action with other RFMOs for the purpose of data collection and information exchange regarding IUU fishing.

113. A number of delegations indicated that the costly nature of MCS operations required providing assistance to developing States and promoting international cooperation among all States concerned, in the form of, *inter alia*, capacity building, physical surveillance, and use of remote sensing. In addition, several small island States delegations underlined the challenges that they faced in the implementation of effective MCS, in view of the proportionately large maritime areas under their jurisdiction and their geographic characteristics. They pointed out that this situation required the adoption of unique approaches to MCS which drew on region-wide resources in a coordinated and integrated manner through a regional strategy.

4. Consideration of elements relating to developing States and non-Parties

114. The President invited statements on elements relating to developing States and non-Parties as outlined in the Elements for assessing the adequacy and effectiveness of the Agreement (A/CONF.210/2006/5). He invited further discussion on impediments to ratifications/accessions to the Agreement. In this regard, he stressed the role of assistance to developing States in helping fulfill the Agreement commitments and encouraging further
participation in the Agreement and adherence by non-Parties. He noted that increased participation in the Agreement, including that of developing States, would benefit all States.

(a) Recognition of special requirements, provisions of assistance, capacity-building

115. A number of delegations indicated that for many developing States, in particular small island developing States, fishing was central to economic survival, but in the absence of the capacity to derive full benefits from it, the exploitation of resources was often carried out by foreign fishing fleets. The social component of fishing activities was also highlighted.

116. Many delegations recognized that human resources and financial constraints in developing States continue to be a major impediment to the effective implementation of the Agreement. Several delegations also emphasized that the costs and know-how needed for the implementation of the Agreement, especially in connection with developing national legislation, infrastructure, surveillance and monitoring mechanisms, training of human resources and strengthening of port controls, constituted an obstacle for developing States to becoming parties and needed to be addressed through the provision of assistance. Several delegations stated that targeted delivery of assistance and capacity building to developing States was critical to cooperative management. Other delegations indicated that assistance to developing States should focus more on the development of national policies for fisheries, rather than the provision of funds. It was underlined that the lack of capacity, which prevented developing States from becoming Parties to the Agreement and members of relevant RFMOs, could lead fishing vessels to register in those countries in order to circumvent the conservation and management measures adopted pursuant to the Agreement. One delegation suggested that information on the Agreement should be further circulated amongst developing States, for example on the occasion of the session of the FAO Committee on Fisheries.

117. A number of delegations outlined their bilateral assistance in support of developing countries for the conservation and management of fishery resources. One delegation called for a clearer definition of areas of support, particularly in relation to the recognition of the special needs of these countries to develop fisheries for food security in grass-root communities. Developed States were invited to develop coherent strategies for the provision of assistance, and policy coherence was also called for at the international level, amongst donors and developing States. It was noted that an opportunity for developing States to indicate their needs could be provided by future meetings of the Open-Ended Informal Consultative Process on Oceans and the Law of the Sea.

118. The importance of Part VII of the Agreement for capacity-building and human resources development in developing States was underlined by many delegations, who also indicated that its provisions and the Assistance Fund established by the United Nations General Assembly resolution 58/14 of 24 November 2003 under this Part, should be widely publicized. It was also stressed that further contributions should be made to the Fund. One delegation stated that there should be greater coordination and consultation between and among donors and developing States so as to rationalize the allocation of aid and avoid overlap. One delegation encouraged developing States to avail themselves of the Part VII Assistance Fund, especially for improved data collection. It was noted that Part VII of the Agreement should not be interpreted narrowly to apply only to assistance in implementing the Agreement, but should also apply to assistance for developing States’ participation in high seas fisheries in general. It was noted that
assistance through RFMOs, for example as done by CCAMLR and WCPFC, through other financial institutions, such as the Global Environment Facility, or through bilateral programmes, could also prove very successful.

119. A number of delegations stated that market access for fishery resources from developing States should be addressed. In particular, one delegation called for the abolition of policies, including those related to subsidies, that are detrimental to developing States’ access to markets. Several delegations stressed the need to adjust stock allocations to fully integrate the participation of developing States. In this regard, a number of observers called for the full application of article 11 of the Agreement (New members or participants).

120. Several delegations stressed the need to assist developing States to develop their fishing capacity. One observer proposed that access to fish stocks by artisanal and small-scale fisheries be granted preferential treatment before considering other types of fisheries, noting that such preferential treatment would be consistent with Millennium Development Goals 1 (Eradicate extreme poverty and hunger) and 7 (Ensure environmental sustainability).

121. A number of observers from RFMOs outlined the assistance that they provided to developing States in the field of data collection. One of them indicated that it was also providing assistance to coastal developing countries in mitigating the effect of artisanal longline fleets on marine turtle populations, through awareness raising of fishing communities, and training of local observers and programme managers. It was stressed that these examples demonstrated that RFMOs often have the necessary skills and contacts to assist with capacity building.

122. One observer emphasized the need to build the capacity of developing States to implement flag State, port State and national control measures, with a view to addressing IUU fishing. This observer also pointed out that participation in RFMOs should not depend on past fishing in order to ensure that developing States did not engage in unsustainable fishing to build a track record. Another observer urged the development of cooperative programmes for fisheries-related data collection, exchange and management, scientific research, use of appropriate fishing gear and techniques and adoption of fisheries compliance and enforcement measures.

(b) Increasing adherence to the Agreement

123. Many delegations stressed that wider participation in the Agreement was fundamental to ensuring the effectiveness of its regime, and welcomed the announcement by a number of delegations that they would shortly ratify the Agreement, pending the completion of domestic procedures.³

124. One delegation stated that meetings such as the Review Conference served to raise awareness amongst non-Parties of the importance of accession to the Agreement, thus fostering wider ratification. Attention was also drawn to the fact that implementation of the Agreement could be strengthened through enhanced regional cooperation.

125. Several non-Parties suggested that one of the objectives of the Conference was to facilitate universal ratification of the Agreement, as the ideal condition under which effective implementation could occur. In this regard, they indicated that there were operative as well as substantive barriers to adherence, including the provisions of the Agreement related to the
compatibility of conservation and management measures (article 7), boarding and inspection (articles 21 and 22), as well as issues related to the rights and duties of port States and to allocation of resources. These delegations stressed that the Agreement should be interpreted and applied in a manner consistent with UNCLOS (article 4). In relation to the issue of compatibility of conservation and management measures, they emphasized that the Agreement did not satisfactorily address the issue of the relationship between the norms adopted by the coastal State in areas under its jurisdiction and those adopted by flag States with regard to the high seas, and called for reiterating the pre-eminence of the rights, duties and interests of coastal States, in conformity with Section 2 of Part VII of UNCLOS. Regarding non-flag State enforcement, which was considered very costly and difficult to carry out due to the vastness of the areas that need to be monitored, it was noted that boarding could be dangerous to the safety of the crews and vessels. The risks that intrusive inspections may pose to legal fishing activities were also underlined, as well as the need for due process in order to ensure the protection of the human rights of the captain and crew of fishing vessels and the prompt release of vessels in case of innocence. Effective alternative measures to boarding and inspection were suggested, such as vessel registers, VMS, trade documentation, certification schemes, permanent independent on-board observers, and joint inspections. One delegation suggested that guidelines should be adopted for joint inspections.

126. A proposal was made by several non-Parties to initiate a process of informal consultations to address these obstacles, including to further consider the use of alternative mechanisms to boarding and inspection, and to consider negotiating a technical annex to the Agreement on compensation for damages and economic losses incurred by boarding and inspection conducted contrary to international law. Another delegation proposed that the Review Conference adopt a recommendation on articles 21 and 22 of the Agreement, which would endorse the application of the mechanism provided for under the 2005 Protocol to the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation in the context of the Agreement.

127. In spite of these obstacles, non-Parties stressed that they had continued their efforts towards the conservation and management of fishery resources, in accordance with the principles of the Agreement, continued, including within RFMOs.

128. Several States Parties emphasized that the Agreement already represented a carefully achieved balance of the interests of coastal States and those of flag States. They noted that non-Parties had accepted that when the text of the Agreement was adopted in 1995, and that it would not be appropriate to re-open a debate on the provisions of the Agreement. They further stated that non-Parties should consider joining the Agreement and continue the debate on issues of concern alongside other States Parties. In particular, the pointed out that issues relating to inspection and control mechanisms could be addressed in the context of RFMOs in order to find regional solutions acceptable to all members, on the basis of the flexible approach provided for in the Agreement. In addition, these delegations stressed that the dispute settlement mechanisms envisaged under the Agreement would also provide an opportunity to address issues for which no settlement had been reached amongst Parties.

5. Further Reviews

129. Most delegations stressed the need to continue the review of the effectiveness of the Agreement. However there was a divergence of views on the frequency and format for
conducted such review. A number of delegations expressed support for informal meetings every two years with every third meeting being held in a more formal setting. One delegation favored a review by the informal meetings every six to eight years, noting that formal conferences divert resources away from implementation. Several delegations proposed a periodic five-year review of the Agreement in the context of formal meetings of States Parties, while others expressed preference for a four-year review cycle. One observer suggested annual informal meetings and review conferences every four years, with a consideration being given to two weeks as participation in the Agreement increases.

IV. Adoption of the final report of the Conference

130. At the last Plenary meeting, the President proposed that the Review Conference adopt the five documents before it containing draft elements negotiated by the Drafting Committee for adoption by the Conference. These documents would be incorporated into what would become the final report of the Conference, which would include the adopted outcome of the Conference and a draft record of deliberations, prepared by the President, with the assistance of the Secretariat. The report would be made available on the DOALOS website for three weeks to allow participants to provide suggestions and comments, including on the characterization of discussions. The President, in cooperation with the Bureau, would then review all suggestions and comments made by participants and decide which of those could be incorporated in the record of deliberations.

131. One delegation proposed an amendment to the document containing elements related to developing States and non-Parties in order to reflect the text agreed by the Drafting Committee. In view of the limited time available to review the draft elements, another delegation stated that the President and the Secretariat should be entrusted with the responsibility of making any technical changes necessary, should the draft elements not properly reflect what had been agreed by the Drafting Committee.

132. The Conference adopted the five documents, as amended, with the understanding that the President, with the assistance of the Secretariat, would combine them into a single document and make any necessary technical changes (Annex).

V. Other matters

133. No delegation made any statement under this agenda item, which was thus concluded.

VI. Suspension of the Review Conference

134. The President proposed changing agenda item 13 from “Closure of the Conference” to “Suspension of the Conference,” following agreement on the resumption of the Conference at a date no later than 2011. The Conference approved the suggestion by the President.

135. In his final address to the review Conference, the President highlighted a difference in the subject of the debates that had taken place during the negotiations of the Agreement and those that had taken place during the Review Conference. He noted that the negotiations of the Agreement had devoted a great percentage of time to the rights and duties of different groups of States, including flag States, coastal States and port States. While these issues were still present and sensitive, he observed that a much greater percentage of time, during the Review Conference, had been spent on finding ways to give full effect to the Agreement. He highlighted the substantive review and assessment as well as the significant number of
recommendations for strengthening the implementation of the Agreement contained in the elements adopted by the Conference, and expressed satisfaction with the decision to keep the Agreement under review. The President further noted that the Review Conference had called the attention to the value of the Agreement and also to the fact that more remained to be done.

136. The representative of Austria, on behalf of the European Union, stated that the Conference had adopted a report that covered a wide range of issues, and had succeeded in reviewing the effectiveness of the Agreement. He also noted that the Conference had shown the necessity of a continuation of the review process, and stressed that, as seen in the final report, States Parties had seriously considered the concerns of non-Parties in order to pave the way for their adherence to the Agreement. The representative of Ecuador congratulated all delegations for their hard work.

137. The President thus declared the Conference suspended.
ANNEX

OUTCOME OF
THE REVIEW CONFERENCE

New York, 26 May 2006

Preamble
The Conference affirmed that United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement (UNFSA) provide the legal framework for conservation and management of straddling fish stocks (SFS) and highly migratory fish stocks (HMS).

The Conference recalled that all provisions of the Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. Regional fisheries management organizations and arrangements (RFMOs) were recognized as the primary mechanism for international cooperation in conserving and managing SFS and HMS. Many RFMOs have incorporated UNFSA provisions in their constitutive agreements, or have adopted measures in practice to implement the Agreement. The Conference encouraged States, as appropriate, to recognize that the general principles of the Agreement should also apply to discrete fish stocks in the high seas.

The Conference acknowledged that the sustainable use of fish stocks is a significant source of food and livelihoods for large parts of the world’s population. At the same time, the Conference expressed concern with the significant adverse impacts that overfishing has had on the state of fish stocks and the ecological integrity of the world’s oceans. Accordingly, the Conference agreed that there is a compelling need for all States and RFMOs to ensure the conservation and sustainable use of SFS and HMS.

I. Conservation and Management of Stocks
A. Review and Assessment
The Review Conference reviewed the current efforts related to conservation and management of straddling fish stocks and highly migratory fish stocks, including adoption of measures to ensure the long-term sustainability of such stocks, addressing overfishing, overcapacity, and the effects of fishing on the marine environment, cooperating to manage fisheries not regulated by an RFMO, and collecting and sharing data. Based on this review, the Review Conference made the following assessments:
1. The adoption and implementation of measures by RFMOS for the long-term sustainability of straddling fish stocks (SFS) and highly migratory fish stocks (HMS) as well as efforts by States to address fisheries not regulated by an RFMO are proceeding unevenly.

2. The FAO has indicated that about 30 percent of the stocks of highly migratory tuna and tuna-like species, more than 50 percent of the highly migratory oceanic sharks and nearly two-thirds of the SFS and the stocks of other high seas fishery resources are overexploited or depleted.

3. Several RFMOs have improved the level of sophistication and effectiveness of the conservation and management measures adopted, including rebuilding plans for SFS and HMS. Nonetheless a number of challenges remain in achieving full implementation of the UNSFA provisions so as to ensure the long-term sustainability of SFS and HMS fisheries, particularly with respect to the application of the precautionary approach and ecosystem approaches to fisheries management.

4. States, both individually and through RFMOs, have begun to apply the precautionary approach to fisheries management. While the application of the precautionary approach is widely accepted, the extent to which the precautionary approach is being implemented in practice varies widely.

5. Since the entry into force of the UNFSA, two new RFMOs have been established (WCPFC and SEAFO) while another RFMO has revised its convention to reflect and incorporate the provisions of the Agreement (IATTC). Further, two other RFMOs are undertaking comprehensive reviews with respect to the provisions of the Agreement (NEAFC and NAFO). However additional work is needed to advance the implementation of the Agreement through RFMOs.

6. A number of significant international fisheries remain outside the purview of an RFMO. However, efforts to establish one RFMO are nearing completion (SIOFA). And still other efforts are underway to develop new RFMOs or arrangements (e.g., in the South Pacific region and in the North Pacific for non-HMS stocks).

7. Overcapacity and overfishing continue to undermine efforts to achieve the long term sustainability of many SFS and HMS. While there has been some progress in addressing overcapacity at the national and regional levels the current level of fishing capacity in many fisheries is still too high. Implementation of the FAO IPOA-Capacity, for which a target date of 2005 was agreed in the Plan of Implementation adopted by the World Summit on Sustainable Development, is far from complete. Some subsidies continue to contribute to fishing overcapacity and overfishing.

8. While many RFMOs have adopted measures to minimize the catch of non-target and associated and dependent species, the scope and effectiveness of these measures could be improved, particularly with respect to the species covered, compliance and data reporting

9. RFMO efforts to implement an ecosystem approach to fisheries management, beyond addressing non-target and associated and dependent species, have increased in recent years with a number of RFMOs undertaking information/data gathering initiatives to assess the need for and scope of additional management measures or other initiatives. However, accelerated progress in this area is needed.
10. Data collection and sharing are a basic obligation of States and fundamental to the effectiveness of RFMOs, yet ensuring timely and accurate data reporting, including reporting of catches, remains a serious challenge. Without comprehensive and accurate data gathering/reporting, both scientific and management processes are undermined.

11. Closed areas, marine protected areas and marine reserves can be effective tools for the conservation and management of some fish stocks and habitats of special concern. Some RFMOs have utilized closed areas both to manage fisheries and to protect habitats and biodiversity.

12. RFMOs with competence to regulate SFS have the necessary competence to conserve and manage high seas discrete stocks. There is no obstacle for such RFMOs to adopt management measures in respect of these stocks in accordance with the general principles set forth in the Agreement.

13. Although in accordance with UNCLOS and UNFSA there is an obligation for coastal States and States fishing on the high seas to cooperate in the conservation and management of SFS and HMS, the provisions of the Agreement with respect to compatibility have not been fully applied in some areas of the oceans for some fisheries.

B. Proposed Means of Strengthening

As a result of the review and assessment, the Review Conference recommended that:

States individually and collectively through RFMOs

14. Strengthen their commitment to adopt and fully implement conservation and management measures for SFS and HMS, including stocks that are currently unregulated, in accordance with best available scientific information on the status of such stocks and the provisions of the Agreement with respect to the precautionary approach.

15. Cooperation between flag States whose vessels fish on the high seas and coastal States should be improved so as to ensure the achievement of compatibility of measures for the high seas and for those areas under national jurisdiction with respect to straddling fish stocks and highly migratory fish stocks in accordance with article 7 of the Agreement.

16. Where needed, establish new RFMOs for the conservation and management of SFS, HMS, and high seas discrete stocks (HSDS) and agree on interim measures until such RFMOs are established.

17. Enhance understanding of ecosystem approaches and commit to incorporate ecosystem considerations in fisheries management, including actions to conserve associated and dependent species and to protect habitats of specific concern, taking into account existing FAO guidelines and request FAO to continue its work on the subject, as appropriate.

18. Develop management tools, including closed areas, marine protected areas, and marine reserves, including the development of criteria for their implementation, to effectively conserve and manage SFS, HMS and HSDS and protect habitats, marine biodiversity and vulnerable marine ecosystems, on a case by case basis in accordance with the best available scientific information, the precautionary approach and international law.
19. Commit to urgently reduce capacity of the world’s fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing assessment in order to reduce fishing capacity to that level, and avoiding the transfer of fishing capacity to other fisheries or areas, in a manner that undermines the sustainability of fish stocks, including, inter alia, those areas where fish stocks are overexploited or in a depleted condition; recognizing in this context the legitimate rights of developing States to develop their fisheries for SFS and HMS stocks consistent with article 25 of the Agreement, article 5 of the Code of Conduct, and paragraph 10 of the IPOA-Capacity.

20. Eliminate subsidies that contribute to IUU fishing, overfishing and fishing overcapacity, while completing the efforts undertaken at the World Trade Organization in accordance with the Doha Declaration to clarify and improve its disciplines on fisheries subsidies.

21. Enhance efforts to address and mitigate the incidence and impacts of all kinds of lost or abandoned gear (so called ghost fishing) and establish mechanisms for the regular retrieval of derelict gear, as well as adopt mechanisms to monitor and reduce discards.

22. Provide required catch and effort data, and fishery-related information, in a complete, accurate, and timely way and to develop, where they do not exist, processes to strengthen data collection and reporting by RFMO Members, including through regular audits of member compliance with such obligations. When such obligations are not met, require the member concerned to rectify the problem, including through the preparation of plans of action with timelines.

23. Cooperate with FAO in the implementation and further development of the Fisheries Resources Monitoring System (FIRMS) initiative.

24. Commit to submit, on a priority basis, information on deepsea fish catches, as requested by the 26th session of the FAO Committee on Fisheries (COFI), and contribute to the work of FAO to collect and collate information concerning past and present deepwater fishing activities and to undertake an inventory of deepwater stocks and an assessment of the effects of fishing on deepwater fish populations and their ecosystems.

FAO

25. Establish arrangements for the collection and dissemination of data in accordance with paragraph 7 of Annex I of the Agreement, where none exists.

26. Revise its global fisheries statistics database to provide information for the stocks to which the Agreement applies, as well as to high seas discrete stocks on the basis of where the catch was taken.

States

27. That are FAO Members provide the Organization with appropriate means to advance these requests and objectives.

II. Mechanisms for International Cooperation and Non-Members

The Conference underscored that international cooperation by all those fishing for straddling fish stocks (SFS) and highly migratory fish stocks (HMS) is necessary for the effective and
long-term conservation and management of such stocks. UNCLOS and the Agreement provide the framework for such international cooperation by States directly or through regional fisheries management organizations and arrangements. Cooperation is also required to modernize and strengthen RFMOs to ensure robust and systematic approaches in international fisheries governance.

A. Review and Assessment

The Review Conference reviewed the current mechanisms for international cooperation for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as efforts to address fishing activity by vessels of non-members of RFMOs. Based on this review, the Review Conference made the following assessments:

In recent years, a significant number of States whose vessels fish for stocks regulated by RFMOs have become members of those RFMOs. Enabling all States with a real interest in the fisheries concerned to become members of RFMOs is essential to the effectiveness of RFMOs. Enhanced capacity building for developing States is critical in this regard.

28. A number of RFMOs have created formal arrangements to promote non-member adherence to adopted conservation and management measures, including data collection and MCS measures. Such “cooperating non member/party” status is often undertaken as an interim step leading to full membership, where this is possible.

29. However, problems of non-compliance by members and cooperating members and fishing by non-members continue to undermine the effectiveness of adopted conservation and management measures within RFMO convention areas.

30. RFMOs are making progress in addressing illegal, unregulated, and unreported fishing activities that undermine the integrity of their conservation and management measures through the adoption of, inter alia, increased monitoring, control, and surveillance, positive and negative vessel lists, trade or market-related measures, catch and trade documentation schemes, port measures, VMS and regulations for transshipment. However, some RFMOs are more advanced than others and the implementation of such measures, particularly across RFMOs and oceans, needs to be strengthened and coordinated.

31. Reflagging activities that are undertaken to contravene the Agreement and circumvent RFMO conservation and management measures continue. In addition, fish continues to enter markets that is caught in contravention of applicable conservation and management measures.

32. While several RFMOs have made good progress in modernizing their mandates to implement UNFSA provisions, a number of RFMOs are not fulfilling the range of functions outlined in UNFSA articles 10-12 fully in a number of areas.

33. Some RFMOs have begun processes to systematically review and assess their performance in implementing relevant provisions of the UNFSA and other relevant instruments. Such processes should be initiated in all other RFMOs.

34. While some RFMOs have undertaken efforts to address participatory rights and allocation issues, including accommodating the interests of new members, as well as the interests of developing States to participate in high seas fisheries for SFS and HMS, further work is
needed, bearing in mind the importance addressing social and economic interests in a manner consistent with conservation objectives.

35. There is a current initiative aimed at developing RFMO standards that may help promote improved governance by sharing information on best practices.

B. Proposed Means of Strengthening

As a result of the review and assessment, the Review Conference agreed to recommend that:

States individually and collectively through RFMOs

36. Continue on an urgent basis to strengthen the mandates of, and measures adopted by, RFMOs to implement modern approaches to fisheries management as reflected in the Agreement and other relevant international instruments, including relying on the best scientific information available and application of the precautionary approach, and incorporating an ecosystem approach into fisheries management.

37. Strengthen and enhance cooperation among existing and developing RFMOs, including increased communication and further coordination of measures. Following the example of RFMOs that regulate HMS and the tuna RFMO meeting that will be hosted by Japan in 2007, agree to hold consultations of member States of RFMOs that regulate SFS to exchange views on key issues.

38. Address participatory rights, including through, inter alia, the development of transparent criteria for allocating fishing opportunities, taking due account, inter alia, of the status of the relevant stocks and the interests of all those with a real interest in the fishery.

39. Recalling that only those States which are members of, or which agree to apply the conservation and management measures established by, RFMOs shall have access to the fishery resources to which those measures apply, establish mechanisms to promote the participation of non-members fishing in the area of competence of an RFMO to either join the RFMO or agree to apply the conservation and management measures established by the RFMO.

40. Commit to provide incentives, where needed, to encourage non-members to join the RFMO, including sharing technology and expertise, assistance in the development of appropriate frameworks, and enhancement of enforcement capabilities. Non-members shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

41. Ensure that post opt-out behavior is constrained by rules to prevent opting out parties from undermining conservation, clear processes for dispute resolution, and a description of alternative measures that will be implemented in the interim.

42. Improve the transparency of RFMOs, both in terms of decision-making that incorporates the precautionary approach and the best scientific information available and by providing reasonable participation for IGOs and NGOs through the organizations’ rules and procedures.

43. Cooperate to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over fishing vessels flying their flag.
44. Take concrete measures to enhance the ability of developing States to develop their fisheries for SFS and HMS, including facilitating access to such fisheries, consistent with article 25 of the Agreement.

45. Urge that performance reviews of those RFMOs of which they are members be undertaken on an urgent basis, whether initiated by RFMOs themselves or with external partners; encourage that such reviews include some element of independent evaluation; and ensure that the results of any such reviews are made publicly available. The reviews should use transparent criteria based on the Agreement and other relevant instruments, including best practices of RFMOs.

46. Cooperate to develop best practice guidelines for RFMOs and apply, to the extent possible, those guidelines to RFMOs in which they participate.

III. Monitoring, Control and Surveillance and Compliance and Enforcement

Effective compliance and enforcement of agreed conservation and management measures, supported by effective monitoring, control and surveillance, is critical to achieving the long-term conservation and sustainable use of SFS and HMS.

A. Review and Assessment

The Review Conference reviewed the current efforts related to monitoring, control, and surveillance (MCS) and compliance and enforcement. Based on this review, the Review Conference made the following assessments:

47. There have been notable improvements in the area of MCS and compliance and enforcement, with many States individually and collectively through RFMOs developing or adopting measures relating to, inter alia, licensing and authorization of vessels, positive and negative lists of vessels, high seas boarding and inspection, alternative mechanisms, observer programmes, trade tracking or catch documentation schemes, vessel monitoring systems, registers of fishing vessels, and transshipment. Certain RFMOs will need further work to adopt a comprehensive MCS scheme. In the absence of such schemes, RFMOs cannot fully provide an appropriate framework for compliance with its conservation and management measures. In addition, significant levels of IUU fishing continue to occur in many fisheries for SFS and HMS. Further steps to combat and deter IUU activities are needed.

48. Effective flag State control over fishing vessels flying their flag is critical to conserving and managing SFS and HMS and preserving the integrity of RFMO regimes.

49. Those engaged in IUU fishing activities have been able to exploit differences or deficiencies among the MCS measures adopted by States and RFMOs to escape detection or to avoid compliance.

50. While there has been some progress in some areas regarding investigation and sanctions for violations, more effort is needed, particularly with respect to expeditious investigation of suspected violations and follow-up actions. Also, despite the standard set by article 19 of the Agreement, the sanctions imposed by some flag States against their vessels in cases of demonstrated violations are not severe enough to deter future violations.

51. States must ensure compliance of their nationals and vessels flying their flag with measures adopted by RFMOs if RFMOs are to effectively discharge their mandates and manage
SFS and HMS. To do so, such States often need the cooperation and assistance of other States, including flag States and port States, to obtain the necessary information or evidence.

52. A number of port States and RFMOs have developed measures or schemes to prevent the landing and transshipment of illegally caught fish in order to promote compliance with RFMO conservation and management measures. However, there is still much to be done in developing such measures or schemes. In particular, a more coordinated approach among States and RFMOs is required.

53. Mechanisms for international cooperation to ensure compliance with conservation and management measures have been established in a number of regions, in accordance with the Agreement, and at the global level regarding the exchange of MCS information.

54. In respect of concerns raised about boarding and inspection, it was noted that provision is made, in article 21, paragraph 15, of the Agreement, for alternative mechanisms in RFMOs. Some participants indicated that consideration of such alternative mechanisms could include, inter alia, on-board observer programmes, utilization of VMS, fish tracking and verification systems, fleet performance review instruments and catch documentation schemes.

B. Proposed Means of Strengthening

As a result of the review and assessment, the Review Conference recommended that:

States individually and collectively through RFMOs

55. Strengthen effective control over vessels flying their flag and ensure such vessels comply with, and do not undermine, conservation and management measures adopted by RFMOs.

56. Adopt, strengthen and implement compliance and enforcement schemes in all RFMOs. Enhance or develop mechanisms to coordinate MCS measures, including those directed at non-members, between RFMOs and with relevant market States, and ensure the fullest possible exchange of MCS information related to IUU fishing activities. Global information exchange efforts should be enhanced.

57. Adopt stringent measures to regulate transshipment, in particular at-sea transshipment. In parallel, request and support FAO in studying the current practices of transshipment as it relates to fishing operations for SFS and HMS and produce a set of guidelines for this purpose.

58. Adopt all necessary port State measures, consistent with article 23 of the Agreement, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing, and promote minimum standards at the regional level. In parallel, initiate, as soon as possible, a process within the FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the IPOA-IUU.

59. Join and actively participate in the International MCS Network, where they have not already done so, and support the enhancement of the International MCS Network.

60. Strengthen fisheries access agreements to include assistance for monitoring, control and surveillance and compliance and enforcement within the areas under the national jurisdiction of the coastal State providing fisheries access.
61. Develop appropriate processes to assess flag State performance with respect to implementing the obligations regarding fishing vessels flying its flag set out in the Agreement and other relevant international instruments; consider the use of multilaterally agreed trade measures, consistent with the rules established by World Trade Organization, to promote implementation of these obligations by flag States.

62. Develop regional guidelines for fisheries sanctions to be applied by flag States so that flag States may evaluate their systems of sanctions to ensure they are effective in securing compliance and deterring violations.

63. Take necessary measures, consistent with international law, to ensure that only fish that have been taken in accordance with applicable conservation and management measures reach their markets, and take steps consistent with national and international law to require those involved in fish trade to cooperate fully to this end; at the same time recognize the importance of market access, in accordance with provisions 11.2.4, 11.2.5 and 11.2.6 of the Code of Conduct for Responsible Fisheries, for fishery products and fish caught in a manner that is in conformity with applicable conservation and management measures.

64. Strengthen, consistent with national law, domestic mechanisms to deter nationals and beneficial owners from engaging in IUU fishing activities and facilitate mutual assistance to ensure such actions can be investigated and proper sanctions imposed.

65. Promote universal acceptance of the FAO Compliance Agreement.

66. Cooperate with FAO to develop a comprehensive global register of fishing vessels, including refrigerated transport and supply vessels, that incorporates all available information on beneficial ownership, subject to confidentiality requirements in accordance with national law.

67. Develop measures to prohibit supply and refueling vessels flying their flag from engaging in operations with IUU listed vessels.

68. Ensure that all vessels fishing on the high seas carry VMS as soon as practicable.

69. Recognize that the development within RFMOs of alternative mechanisms for compliance and enforcement in accordance with article 21, paragraph 15, of the Agreement, including other elements of a comprehensive MCS regime that effectively ensures compliance with the conservation and management measures adopted by the RFMO, could facilitate accession to the Agreement by some States.

IV. Developing States and Non-Parties

The Conference affirmed that increasing adherence to the Agreement is vital to promoting full implementation of the Agreement and achieving its objective. The Conference further recognized the need to provide assistance to developing States in the areas of inter alia data collection, scientific research, monitoring, control and surveillance, human resource development, and information sharing, as well as technical training and assistance as it relates to conservation and management of SFS and HMS and participation in such fisheries.
A. Review and Assessment

The Review Conference reviewed the current efforts to implement Part VII of the Agreement relating to the requirements of developing States. The Review Conference also considered issues related to ratification and accession to the Agreement, including ways to encourage more States to become party. Based on this review, the Review Conference made the following assessments:

70. Enhancing assistance to developing States Parties is necessary to enable such States to implement the Agreement to the fullest extent possible.

71. Some useful steps have been taken to assist developing States Parties in its implementation. The States Parties to the Agreement established an Assistance Fund pursuant to Part VII of the Agreement, administered by the FAO, to provide those States Parties, especially small island developing States Parties, with financial assistance to help them in implementing the Agreement. The Fund currently has $417,700 USD available, based on the contributions of Canada, Iceland, Norway and the United States. Canada has pledged to increase its total contributions to the Part VII Fund to $500,000 (CAD).

72. Other vehicles also exist to assist developing States in the management of fisheries for SFS and HMS, including funds and other programs established by RFMOs, international financial institutions, FAO, and bilateral programs. For example, the WCPFC has established a Special Requirements Fund for developing State Members. CCAMLR has agreed to develop a program for Contracting Parties to provide support and technical assistance as well as advice and training to Non-Contracting Parties. The SEAFO Convention has also established mechanisms to provide not only financial assistance to developing countries, but also technical assistance, information exchange to better facilitate conservation and management of stocks, and assistance with scientific research, and monitoring, control and surveillance. CCSBT will cover traveling expenses for developing countries that would like to be observers at their meetings. ICCAT also has mechanisms to assist developing States that are members and the Madrid Protocol to the ICCAT Convention has entered into force, reducing the costs of membership for developing States.

73. Further assistance is critically needed to build the capacity of developing States, particularly in the areas of (1) stock assessment and scientific research; (2) data collection and reporting; (3) monitoring, control, and surveillance; (4) port State control; (5) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (6) development of fisheries for SFS and HMS; (7) human resource development; and (8) information sharing.

74. Developing States also require assistance in facilitating their participation in RFMOs, including through facilitating access to fisheries for SFS and HMS, in accordance with article 25, paragraph 1(b), of the Agreement, as well as the need to ensure that such access benefits the States concerned and their nationals.

75. The number of States Parties to the Agreement has been growing steadily and fourteen States have indicated their intention to become party to the Agreement in the near future.

76. Several non-Parties to the Agreement identify impediments to the possibility of their becoming party to the Agreement. Those impediments include lack of capacity and resources to implement the Agreement as well as concerns over the possible interpretation and
implementation of several provisions of the Agreement, specifically articles 4, 7, 21, 22, and 23.

77. Many non-Parties, along with States Parties to the Agreement, cooperate as members of RFMOs and implement conservation and management measures at the national level, contributing to the long-term conservation and sustainable use of SFS and HMS.

78. However, while there has been an increase in the number of parties to the Agreement, more efforts are needed to increase adherence in order to reach the goal of universal participation.

B. Proposed Means of Strengthening

As a result of the review and assessment, the Review Conference agreed to recommend that:

States

79. Urgently contribute, where they have not yet done so, to the Part VII Fund or through other mechanisms to assist developing States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Such assistance should be targeted to such areas as (1) stock assessment and scientific research; (2) data collection and reporting; (3) monitoring, control, and surveillance; (4) port State control; (5) compliance with market and trade related measures and meeting market access requirements, including with respect to health and quality standards; (6) development of fisheries for SFS and HMS; (7) human resource development; and (8) information sharing, including vessel information.

80. Enhance the participation of developing States in RFMOs, including through facilitating access to fisheries for SFS and HMS, in accordance with article 25, paragraph 1(b), of the Agreement, taking into account the need to ensure that such access benefits the States concerned and their nationals.

81. Cooperate with and assist developing States in designing and strengthening their domestic regulatory fisheries policies and RFMOs in their regions.

82. Promote coherence in the provision of such assistance and cooperation, both within individual governments and through international mechanisms.

83. Urge all States with an interest in fisheries for SFS and HMS that have not yet done so to become party to the Agreement as soon as possible and disseminate information about the Agreement, including regarding its objective and the rights and duties it provides.

84. Exchange ideas on ways to promote further ratification and accession to the Agreement through a continuing dialogue to address concerns raised by some non-parties regarding, in particular, articles 4, 7, 21, 22, and 23 of the Agreement.

FAO and DOALOS

85. Further publicize the availability of assistance through the Part VII Fund.

86. Solicit views from developing States Parties regarding the application and award procedures of the Part VII Fund, and consider changes where necessary to improve the process.
States collectively through RFMOS

87. Establish a link to the Part VII Fund homepage on their organization’s website.

V. Dissemination of the final report and further reviews

The Review Conference agreed to request:

88. The President of the Review Conference transmit the final report of the Review Conference to the secretariats of all RFMOs, including, where possible, to those under negotiation, as well as to the UN General Assembly, the IMO, the FAO and other relevant organizations, and to highlight relevant recommendations and requests for action contained in the report.

The Review Conference further agreed:

89. That the Review Conference has provided a useful opportunity to assess the effectiveness of the Agreement and its implementation. Further review is also necessary.

90. To continue the Informal Consultations of States Parties (ICSPs) and keep the Agreement under review through the resumption of the Review Conference at a date not later than 2011, to be agreed at a future ICSP. To request the UN Secretary-General to convene such meetings.

1 Documents A/CONF.210/2006/7, A/CONF.210/2006/8, A/CONF.210/2006/9 and A/CONF.210/2006/10. Information provided by inter-governmental organizations, including the FAO and RFMOs, prior to the meeting was posted on the website of DOALOS (http://www.un.org/Depts/los/convention_agreements/review_conf_InputsIGOs.htm). Several States and organizations also circulated information during the meeting.

2 Argentina, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Mexico and Peru.

3 States which indicated their intention to become party to the Agreement both at the fifth round of Informal Consultations of States Parties to the Agreement and at the Review Conference included: Japan, Indonesia, Morocco, Mozambique, Palau, Philippines, and Sierra Leone. Austria, on behalf of the European Union, also indicated that EU Member States that were not yet party to the Agreement would become party in the near future.