

# THE UNITED NATIONS FISH STOCKS AGREEMENT

A GUIDE FOR RAISING AWARENESS,  
FURTHERING UNDERSTANDING AND  
STRENGTHENING IMPLEMENTATION  
OF ITS PROVISIONS



Office of Legal Affairs  
Division for Ocean  
Affairs and the  
Law of the Sea

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**The United Nations Fish Stocks Agreement:**  
**A Guide for Raising Awareness, Furthering Understanding and Strengthening  
Implementation of Its Provisions**

**(November 2024)**

## EXECUTIVE SUMMARY

The objective of this Guide is to promote the full and effective implementation of the United Nations Fish Stocks Agreement (UNFSA)<sup>1</sup> (the Agreement) by furthering the awareness and understanding of its provisions, as well as the outcomes and challenges of implementation since its adoption in 1995.

The objective of the Agreement focused on ensuring the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks, and while many of its provisions relate to high seas fishing activities, others apply more universally.

The Guide will serve as an important resource for States considering becoming parties to the Agreement, as well as States Parties and those cooperating through regional fisheries management organizations and arrangements (RFMO/As) to implement its provisions.

This Guide explains the historic, legal and scientific aspects of the Agreement as well as the fisheries resources to which it applies. It reports examples of implementation practices at all levels and provides checklists for its effective application.

Guidance from and synergies with the international community are integrated in this Guide. They comprise review mechanisms under the Agreement including the recommendations of the Review Conference and the outcomes of the Informal Consultations of States Parties. In addition, relevant international instruments and developments are described; guidance from General Assembly resolutions is reported; and other initiatives, reports and guidelines, including by the Food and Agriculture Organization of the United Nations (FAO), are referenced.

This Guide is part of the “Project of Assistance to Strengthen Participation in and Implementation of UNFSA.” The Project is made possible by a contribution from the European Union to the Assistance Fund established pursuant to Part VII of UNFSA, which is administered by FAO in cooperation with the Division for Ocean Affairs and the Law of the Sea (DOALOS). The Project is implemented by DOALOS, in cooperation with FAO.

For more information please visit: [un.org/oceancapacity/unfsaproject](https://un.org/oceancapacity/unfsaproject).

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<sup>1</sup> The United Nations 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 (in force as from 11 December 2001); available at <https://www.un.org/oceancapacity/unfsa>.

## USE OF THIS GUIDE

This Guide is presented in five chapters as summarized below. It is directed towards a wide range of users including government officials, fisheries' managers, scientists, lawyers, enforcement authorities, academics, civil society and other stakeholders. It aims to present the information objectively, without interpretation of the various provisions of legal instruments cited.

An explanatory overview of the Guide appears below to enable the users to easily focus on the most relevant content for their purposes. In summary:

- Chapters I to III offer an introductory background to provide context for those users who may not be familiar with the development or scope of the Agreement and its various mechanisms and processes.
- Chapter IV provides information on the provisions of the Agreement on an article-by-article basis.
- Chapter V presents summary conclusions.

The content of chapters I–IV is summarized below.

Chapter I, INTRODUCTION, provides background to the Agreement, its development and framework and current participation. It underlines the need for strengthening full and effective implementation and participation and describes the fisheries and the benefits of implementation. Chapter I addresses the matters below.

Objective and use of Guide	<i>Objective, potential users</i>
Introduction to the Agreement	<i>Background, strengthening implementation/participation</i>
Introduction to the Conference	<i>Legal origins, key issues and concerns at the Conference convened to negotiate the Agreement (1993–1995)</i>
Framework of the Agreement	<i>Main elements of the Agreement</i>
Fisheries covered by the Agreement	<i>General, straddling/highly migratory and other high seas fish stocks, associated or dependent species</i>
Profile of current participation	<i>Participation by States Parties and RFMO/As, benefits of implementation</i>

Chapter II, IMPLEMENTATION REVIEW AND ASSISTANCE MECHANISMS AND PROCEDURES, describes three important mechanisms and processes that guide and support implementation, the Review Conference on the Agreement, the Informal Consultations of States Parties to the Agreement (ICSP) and the Assistance Fund under Part VII of the Agreement.

Chapter III, GENERAL BACKGROUND TO THE AGREEMENT AND RELATED INSTRUMENTS, describes the context of the development of the agreement and linkages with related instruments.

Chapter IV, THE AGREEMENT, explains each Part and article of the Agreement as described below.

## Agreement – Parts

Overview and background, summarizing the articles and their historical contexts

### **Agreement – Articles**

Text	Text of the article
Highlights	A descriptive overview of the article and associated instruments and considerations
Implementation guidance and practice	<p>Guidance is drawn from sources including the Review Conference and Informal Consultations of States Parties under the Agreement, General Assembly resolutions, related international instruments and FAO resources including technical and negotiated guidelines.</p> <p>Examples of implementation practices of RFMO/As and States are given, based mainly on the responses to the voluntary questionnaire on implementation of the Agreement and which appear in the Secretary-General's report to the Review Conference.</p>
Implementation checklist	The implementation checklists refer to specific provisions of the Agreement, as well as relevant matters from supplementary sources such as recommendations of the Review Conference and General Assembly resolutions.

## ACRONYMS AND ABBREVIATIONS

ABNJ	Areas beyond national jurisdiction
Agreement	1995 United Nations Fish Stocks Agreement
ALDFG	Abandoned, lost or otherwise discarded fishing gear
BBNJ Agreement	2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction
CBD	1992 Convention on Biological Diversity
CMM	Conservation and management measure
Conference	United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks
Convention	1982 United Nations Convention on the Law of the Sea
DOALOS	The Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs
EAF	Ecosystem approach to fisheries
EEZ	Exclusive economic zone
FAO	The Food and Agriculture Organization of the United Nations
FAO Code of Conduct	1995 FAO Code of Conduct on Responsible Fisheries
FAO Compliance Agreement	1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
FAD	Fish Aggregating Device
FIRMS	FAO Fisheries and Resources Monitoring System
GA	General Assembly of the United Nations
ICSP	Informal Consultation of States Parties to the Agreement
ILO	International Labour Organization
IMO	International Maritime Organization
IPOA	International Plan of Action
IUU fishing	Illegal, unreported and unregulated fishing
IPOA-IUU	2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
UNCED	1992 United Nations Conference on Environment and Development
UNFSA	United Nations Fish Stocks Agreement
VME	Vulnerable marine ecosystem
VMS	Vessel monitoring system
WTO	World Trade Organization

## Regional Fisheries Management Organizations and Arrangements (RFMO/As)

CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
IOTC	Indian Ocean Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North-East Atlantic Fisheries Commission
NPFC	North Pacific Fisheries Commission
SEAFO	South East Atlantic Fisheries Organisation
SIOFA	Southern Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Fisheries Management Organisation
WCPFC	Western and Central Pacific Fisheries Commission



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# I INTRODUCTION

## 1. Objective and use of this Guide

The objective of this Guide is to promote the full and effective implementation of the United Nations Fish Stocks Agreement<sup>2</sup> (the Agreement) by furthering the awareness and understanding of its provisions, as well as of the recommendations from the Review Conference. It will also serve as an important resource for States considering becoming parties.

This Guide describes and elaborates on the provisions of the Agreement, in particular by drawing on its historical context, relevant guidance (such as the recommendations of the Review Conference, the outcomes of the Informal Consultations of States Parties and instruments developed by the Food and Agriculture Organization of the United Nations (FAO) and regional fisheries management organizations and arrangements (RFMO/As) and relevant examples of State practice at the regional level through RFMO/As or at the national level.

## 2. Introduction to the Agreement

The 1995 United Nations Fish Stocks Agreement is a cornerstone of international fisheries law, providing an international legally binding regime for the conservation and management of some of the world's most commercially exploited fish stocks. Building on the provisions of the 1982 United Nations Convention on the Law of the Sea (the Convention), it establishes a framework for international cooperation among States fishing for the same fish stocks in areas under national jurisdiction and in areas beyond national jurisdiction including through RFMO/As.

It is one of three implementing Agreements to the Convention, together with the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and the 2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement).

In an era that witnessed rapid modernization of industrial fishing technology and increasing global environmental concerns,<sup>3</sup> it was estimated that the proportion of total marine catches coming from the high seas, including straddling fish stocks and highly migratory fish stocks, doubled from 1970 to 1980, partially because of the ongoing extension of coastal State jurisdiction over fishing to 200 nautical miles under the Convention.<sup>4</sup> The Agreement was developed to address the declining state of high seas fisheries for straddling fish stocks and highly migratory fish stocks since the adoption of the Convention in 1982, due to increased fishing activity coupled with ineffective management of fisheries.

The Agreement is the most comprehensive legally binding fisheries instrument developed since the Convention: it sets out obligations in relation to the conservation and management of highly migratory fish stocks and straddling fish stocks based on modern management principles; establishes minimum standards for the role and performance of RFMO/As; further elaborates the duties of the

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<sup>2</sup> The United Nations 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 (in force as of 11 December 2001); available at [https://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](https://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm).

<sup>3</sup> The concerns were reflected, among others, in the United Nations Conference on Environment and Development and General Assembly resolutions.

<sup>4</sup> FAO reported in 1995 that high seas catches rose from an estimated 5 percent of total marine catches in the 1970s to more than 10 percent in the 1980s. FAO, *The State of World Fisheries and Aquaculture* (1995), <https://www.fao.org/3/v5550e/v5550e.pdf>.



flag State for vessels fishing under its flag; establishes procedures and mechanisms for international cooperation in monitoring, control and surveillance, as well as compliance and enforcement; and recognizes the special requirements of developing States. The regime established by the Agreement is underscored by dispute settlement provisions and a continuing implementation review mechanism through the Review Conference on the Agreement.

Nearly three decades after its adoption, the Agreement remains a fundamental building block for the conservation and management of living marine resources, and its implementation brings broader benefits for the health and resilience of marine ecosystems and biodiversity. The Secretary-General of the United Nations, in his report to the resumed Review Conference stated the following:

The full and effective implementation of the Agreement thus remains critical to achieving the long-term sustainability of straddling fish stocks and highly migratory fish stocks as well as to meeting global goals and commitments, including those reflected in the 2030 Agenda [for Sustainable Development].<sup>5</sup>

In order to ensure its continued effectiveness, there is a prevailing need to strengthen implementation of the Agreement at the global, regional and national levels. Building awareness of its provisions, how they have been implemented and how subsequently developed instruments can inform or even strengthen their implementation is critical in this regard. It is equally important to continue to increase participation in the Agreement, including by providing clear guidance on the obligations of States parties to it and the benefits of participation.

### **3. Introduction to 1993–1995 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (Conference)**

#### **(a) Legal origins of the Conference**

A bold new era that reset the global rights and responsibilities for the conservation and management of living resources was introduced by the Convention. Coastal States' oceanic realms had been expanded through the introduction of the exclusive economic zone (EEZ); rights and duties for high seas fisheries were more clearly defined for flag States, including regarding the role of RFMO/As,<sup>6</sup> but were still framed only in general terms.

However, over the next decade, it became clear that much more was needed to secure sustainability of the straddling fish stocks and highly migratory fish stocks and reverse environmental degradation, including from fisheries. A number of important fish stocks had collapsed,<sup>7</sup> there was weak enforcement by RFMO/As and flag States and disagreements on allocations were common.<sup>8</sup>

There was particular concern regarding the sustainability of two categories of stocks, for which the Convention had recognized the need for enhanced international cooperation due to their transboundary nature: straddling fish stocks and highly migratory fish stocks. The Convention

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<sup>5</sup> A/Conf.210/2023/1, para. 309. General Assembly resolution 70/1: Transforming our world: The 2030 Agenda for Sustainable Development, is available at <https://undocs.org/A/RES/70/1>.

<sup>6</sup> Although the Convention does not directly refer to RFMO/As, it requires coastal States to seek to agree "either directly or through appropriate subregional or regional organizations" on certain matters relating to straddling fish stocks (art. 63) and to cooperate directly or through "appropriate international organizations" on certain matters relating to highly migratory species (art. 64). The Agreement focuses on RFMO/As as a vehicle for implementation of these provisions.

<sup>7</sup> For example, cod in the northwest Atlantic and pollock in the Bering Sea.

<sup>8</sup> For a detailed account, see Michael W. Lodge and Satya N. Nandan, "Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995," *The International Journal of Marine and Coastal Law*, vol. 20, Nos. 3–4 (2005).

addressed straddling fish stocks and highly migratory species directly in Articles 63 and 64, respectively. Although these articles created an obligation for cooperation between coastal States and fishing States in each situation, there was no further elaboration of a framework or process.

It was clear after some years that the regime for high seas fishing and these articles were inadequate to address overfishing and depletion of the world's fish stocks.<sup>9</sup> This was addressed in a broader global context by the United Nations General Assembly and diplomatic activity leading up to the 1992 United Nations Conference on Environment and Development (UNCED).<sup>10</sup>

The outcome of UNCED, Agenda 21,<sup>11</sup> called for an international conference to be convened under the auspices of the United Nations "with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks."<sup>12</sup>

### **(b) The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>13</sup>**

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (the Conference) was held over six sessions between 1993 and 1995,<sup>14</sup> based on the negotiated terms of reference adopted in General Assembly resolution 47/192.

### **(c) Key concerns and progress during the sessions**

At the first organizational session of the Conference,<sup>15</sup> delegates considered a number of documents that would provide legal background<sup>16</sup> and requested for the Chairman of the Conference, Mr. Satya N. Nandan of Fiji, to prepare a paper containing a list of substantive subjects and issues as a guidance for the Conference.

Matters addressed in the negotiating text introduced by the Chairman at the second session<sup>17</sup> and the revised negotiating text introduced at the third session<sup>18</sup> are shown in annex 1. At the fourth

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<sup>9</sup> For example, many regional agreements did not provide adequate enforcement mechanisms, resolve disagreements over allocations or address issues of new entrants into a fishery.

<sup>10</sup> Including UNGA resolution 44/228 on the UN Conference on Environment and Development, which called for a global meeting to devise integrated strategies to halt and reverse the negative impact of human behaviour on the physical environment and promote environmentally long-term sustainable economic development in all countries, UN Doc. A/44/228. Four Prepcoms were held between August 1990 and April 1992, and by the opening of UNCED, 98 per cent of Agenda 21 had been completed and approved. The fish stocks issue was not yet resolved, so Agenda 21 called for a conference, described below.

<sup>11</sup> Available at <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>. See sect. II, Conservation and Management of Resources for Development, chap. 17. Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources (17.1–17.136).

<sup>12</sup> Agenda 21, chap. 17, para. 17.49(e), UN Doc. A/CONF.151/26 (vol. II). In accordance with GA resolution 49/121, the mandate of the conference was to identify and assess existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks, consider means of improving fisheries cooperation among States and formulate appropriate recommendations. The work and the results of the conference were to be fully consistent with the provisions of the Convention, in particular the rights and obligations of coastal States and States fishing on the high seas.

<sup>13</sup> The background and proceedings of the Conference are described in: D.A. Balton, "Strengthening the law of the sea: The new agreement on straddling fish stocks and highly migratory fish Stocks," *Ocean Development and International Law*, vol. 27 (1996), p. 125; D.J. Doulman, "Structure and process of the 1993–1995 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks," *FAO Fisheries Circular*, Doc. FID/C898 (Rome, FAO, 1995); Paul Fauteux, "L'initiative juridique canadienne sur la pêche en haute mer," *Canadian Yearbook of International Law*, vol. 31 (1993), p. 33; M. Hayashi, "The role of the United Nations in managing the world's fisheries," in *The Peaceful Management of Transboundary Resources*, Blake and others, eds. (The Hague, Kluwer, 1995), p. 373.

<sup>14</sup> The intervening sessions were held in July 1993, March 1994, August 1994 and March–April 1995.

<sup>15</sup> 19–23 April 1993.

<sup>16</sup> They included reports and documents of the 1992 FAO Technical Consultation on High Seas Fishing; the Declaration of Cancún adopted by the 1992 International Conference on Responsible Fishing in Cancún, Mexico; the Strategy for Fisheries Management and Development adopted by the 1984 World Conference for Fisheries Management and Development; the draft Code of Conduct for Responsible Fisheries, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), at that time available in draft form. See Doulman, *FAO Fisheries Circular*, Doc. FID/C898.

<sup>17</sup> 12–30 July 1993.

<sup>18</sup> 14–31 March 1994.

session of the Conference<sup>19</sup> only a few new proposals were put forward and more time was devoted to negotiation.

At the fifth session of the Conference<sup>20</sup> the Chairman noted that the following issues had generated most discussion and debate intersessionally:

- (i) Compatibility of conservation and management measures in areas under national jurisdiction and in high seas areas
- (ii) New participants in subregional or regional fisheries organizations or arrangements
- (iii) Enforcement of conservation and management measures in high seas areas by States other than the flag State (non-flag States)<sup>21</sup>
- (iv) Desirability of using the provisions of the Convention with respect to the settlement of disputes

The fifth session agreed that the Agreement would be a binding legal instrument, and that the dispute settlement procedures in the Convention would be used. However, a key area of disagreement centred on regional agreements or arrangements for compliance and enforcement,<sup>22</sup> in particular high seas boarding and inspection by non-flag States.

At the close of the session, the Chairman stated that the text, as it stood, created three essential pillars:

- (i) It provided the principles and practices on which enhanced stock management should be based.
- (ii) It ensured that conservation and management measures adopted for high seas fisheries would be adhered to and complied with and that they would not be undermined by those engaged in high seas fishing.
- (iii) It provided for the peaceful settlement of disputes, in accordance with the relevant provisions of the Convention.

At the sixth session of the Conference,<sup>23</sup> a main outstanding issue was existing article 22 on basic procedures for boarding and inspection, which had been the subject of two intersessional meetings but still required substantial negotiation.<sup>24</sup> The Conference agreed to include basic procedures for

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<sup>19</sup> 15–26 August 1994.

<sup>20</sup> 27 March–12 April 1995. It was preceded by separate intersessional meetings of distant water fishing nation (DWFN) States convened in January 1995 and coastal States convened by “like-minded” States (25 coastal States) in February 1995, which developed proposed amendments to the draft Agreement.

<sup>21</sup> This refers to a State that is not the flag State of the vessel subject to the enforcement.

<sup>22</sup> This Article had been identified in the fourth session by many delegations as being at the heart of the Agreement, and the DWFNs found it problematic. The issue for DWFNs was whether non-flag States could apprehend vessels fishing on the high seas, which had undermined, or which were believed to have undermined, internationally agreed conservation and management measures for straddling fish stocks and highly migratory fish stocks. The coastal States argued that the Convention required further elaboration and strengthening, and that the Conference should address this matter directly. DWFNs, on the other hand, took the position that it would be contrary to international law to permit the arrest and detention of vessels on the high seas by a non-flag State.

<sup>23</sup> 24 July–4 August 1995, resumed 4 December 1995.

<sup>24</sup> Outstanding issues included the following:

- (i) Boarding and inspection of vessels within the context of subregional or regional organizations or arrangements
- (ii) Clarification of the roles of, and procedures for, the flag State and the inspecting State in cases where vessels are boarded and violations have, or have not, been committed
- (iii) Detention of crew
- (iv) Listing of serious violations (e.g. fishing without a licence, failing to maintain accurate records of catch and catch-related data, fishing in a closed area, using prohibited fishing gear, etc.), as opposed to providing a definition of a serious violation
- (v) Application of the proportionality principle when action is taken by a non-flag State against a vessel that has operated contrary to subregional or regional conservation and management arrangements
- (vi) Liability for damage or loss arising from enforcement action taken in accordance with art. 21.

boarding and inspection, which would only apply if alternative measures were not put in place in order to provide guidance and encourage the adoption of measures at the regional level.

Some significant provisions that were added to the Chairman's original draft negotiating text throughout the sessions are noted in annex 1.

On 4 August 1995 the Conference adopted, by consensus, 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.<sup>25</sup>

On 4 December 1995, the sixth session of the Conference resumed and the Final Act of the Conference and the Agreement were opened for signature at United Nations headquarters in New York.

At the commencement of the session the Chairman pointed out that the binding Agreement:

- (i) Was detailed and precise, based on sound principles providing a blueprint for fisheries conservation and management with a view to long-term sustainable use of resources.
- (ii) Responded effectively to the environmental concerns of the international community, as called for at the 1992 Rio Summit, establishing an ecosystem approach to fisheries' management based on the best available scientific data and a precautionary approach to management.
- (iii) Was reinforced by clear provisions on enforcement of conservation and management measures and procedures for the compulsory settlement of fisheries disputes.
- (iv) Emphasized the pivotal role of subregional or regional organizations or arrangements.
- (v) Was linked intrinsically to the Convention.

The Chairman added that although the Agreement applied only to straddling fish stocks and highly migratory fish stocks, the principles enunciated therein had application to all fisheries, particularly with respect to its environmentally based provisions. He added that the principles on the application of the precautionary approach to fisheries conservation and management could be regarded as being on the cutting edge of sound fisheries' management.

The Chairman noted the impact that the Agreement was already having on the work of subregional or regional fisheries organizations or arrangements around the world because their members had started to assess its effects on the mandates of their respective organizations. In this connection particular attention was being paid to issues concerning conservation and management measures, decision-making, and transparency.

#### **(d) Entry into force**

The Agreement entered into force on 11 December 2001, 30 days after the date of deposit of the thirtieth instrument of ratification or accession.<sup>26</sup>

Since then, the Agreement has served as a basis for national legislation on fisheries management,<sup>27</sup> the constitutive instruments, legally binding measures and performance reviews of RFMO/As with

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<sup>25</sup> The Conference agreed that the Final Act of the Conference and the Agreement would open for signature on 4 December 1995. The Agreement would enter into force 30 days after the receipt of the thirtieth instrument of ratification or accession.

<sup>26</sup> In accordance with art. 40(1) of the Agreement.

<sup>27</sup> William Edeson, David Freestone and Elly Gudmundsdottir, "Legislating for sustainable fisheries: A guide to implementing the 1993 FAO Compliance Agreement and 1995 UN Fish Stocks Agreement," Law, Justice, and Development Papers (Washington, D.C., World Bank, 2001), ISBN 0-8213-4993-7.

competence over straddling fish stocks and highly migratory fish stocks and various subsequent complementary international instruments.<sup>28</sup>

#### **4. Framework of the Agreement**

The Agreement consists of a preamble, 13 parts and 50 articles. It has two annexes dealing respectively with the standard requirements for the collection and sharing of data, and guidelines for the application of precautionary reference points in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The main elements of the Agreement include the following:

- (i) General principles, including to ensure long-term sustainability of the straddling fish stocks and highly migratory fish stocks and to take precautionary and ecosystem approaches in adopting conservation and management measures.
- (ii) Requirements for coastal States and States fishing on the high seas for the same stocks to ensure that the conservation and management measures for the straddling highly migratory fish stocks adopt a precautionary approach to fisheries management and are compatible within areas under national jurisdiction and the high seas.
- (iii) Duties of flag States in relation to their vessels fishing on the high seas for straddling fish stocks and highly migratory fish stocks.
- (iv) Detailed rules on the establishment and operation of subregional or regional fisheries' management organizations or arrangements with competence to establish conservation and management measures for straddling fish stocks and highly migratory fish stocks on the high seas.
- (v) Duties of parties to the Agreement to join such organizations or arrangements or agree to comply with their measures, or not permit fishing in areas where the measures apply.
- (vi) Enforcement procedures, including by non-flag States, and port States' rights and duties.
- (vii) Recognizing the special requirements of developing countries and providing for assistance in implementation.
- (viii) Peaceful settlement of disputes.

The full framework of the Agreement and its articles are summarized in annex 2.

#### **5. Fisheries resources covered by the Agreement**

The Agreement provides the international legal framework for the conservation and management of two categories of fish stocks: straddling fish stocks and highly migratory fish stocks. In addition, its provisions are relevant to the conservation and management of three other categories, namely associated species, dependent species and other high seas fish stocks (including discrete high seas

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<sup>28</sup> The General Assembly has encouraged countries to extend the principles of the Agreement to discrete high seas fish stocks – stocks that are not straddling or migratory but are found in the deep oceans or the high seas. The general principles of the Agreement are also key principles in the 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas and the protection of vulnerable marine ecosystems.

fish stocks). This section provides a clarification of these terms and the broader application of a number of the provisions of the Agreement to marine capture fisheries, which are referenced throughout this Guide. These are based on initial explanations given in the Report of the Secretary General to the Review Conference in 2006<sup>29</sup> together with current information and approaches.

#### (a) General application of the Agreement

A number of provisions of the Agreement, including those on the application of the precautionary approach and an ecosystem approach to fisheries management and the compatibility of measures, are applicable to the conservation and management of all marine capture fisheries for covered stocks, whether within or beyond areas under national jurisdiction. They are often associated with “generally recommended international minimum standards” for the conservation of living resources, as referred to in articles 61(3) and 119(1)(a) of the Convention.<sup>30</sup>

The term “fish” is defined in Article 1 of the Agreement: it “includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention.”

#### (b) Highly migratory fish stocks

“Highly migratory species” are defined as those species listed in Annex I to the Convention. It should be noted in this regard that this Annex of the Convention includes both highly migratory fish species and highly migratory mammal species,<sup>31</sup> but that the Agreement only applies to fish species listed in the annex. They include tuna and tuna-like species, marlins and swordfish, oceanic sharks, pomfrets, sauries and dolphinfish.

#### (c) Straddling fish stocks

The Convention does not use the term “straddling fish stocks,” but article 63, paragraph 2, refers to “the same stock or stocks of associated species [that] occur both within the exclusive economic zone and in an area beyond and adjacent to the zone.” That can be taken as a working definition of the term “straddling fish stock” under the Agreement. The Agreement, while using the term extensively, does not define it. The concept of a straddling fish stock can cover a

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<sup>29</sup> A/CONF.210/2006/1, paras. 4, 12–15, 22, 82, 104; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/669/00/PDF/N0566900.pdf?OpenElement>.

<sup>30</sup> A/CONF.210/2006/1, para. 4.

<sup>31</sup> According to annex I of the Convention, Highly Migratory Species, consists of the following;

1. Albacore tuna: *Thunnus alalunga*
2. Bluefin tuna: *Thunnus thynnus*
3. Bigeye tuna: *Thunnus obesus*
4. Skipjack tuna: *Katsuwonus pelamis*
5. Yellowfin tuna: *Thunnus albacares*
6. Blackfin tuna: *Thunnus atlanticus*
7. Little tuna: *Euthynnus alletteratus*, *Euthynnus affinis*
8. Southern bluefin tuna: *Thunnus maccoyii*
9. Frigate mackerel: *Auxis thazard*, *Auxis rochei*
10. Pomfrets: Family Bramidae
11. Marlins: *Tetrapturus angustirostris*, *Tetrapturus belone*, *Tetrapturus pnuegeri*, *Tetrapturus albidus*, *Tetrapturus audax*, *Tetrapturus georgei*, *Makaira mazara*, *Makaira indica*, *Makaira nigricans*
12. Sail-fishes: *Istiophorus platypterus*, *Istiophorus albicans*
13. Swordfish: *Xiphias gladius*
14. Sauries: *Scomberesox saurus*, *Cololabis saira*, *Cololabis adocetus*, *Scomberesox saurus scombroides*
15. Dolphin: *Coryphaena hippurus*, *Coryphaena equiselis*
16. Oceanic sharks: *Hexanchus griseus*, *Cetorhinus maximus*, Family Alopiidae, *Rhincodon typus*, Family Carcharhinidae, Family Sphyrnidae, Family Isurida
17. Cetaceans: Family Physeteridae, Family Balaenopteridae, Family Balaenidae, Family Eschrichtiidae, Family Monodontidae, Family Ziphiidae, Family Delphinidae

continuum from most of the fish being inside areas within national jurisdiction to most of the fish being outside such areas.

FAO reviews the status of select straddling fish stocks on a subregional basis.<sup>32</sup> Examples of the select straddling fish stocks from different regions include squids, pollock, jack mackerel, orange roughy, halibut, cod, haddock, flounder and hake.

#### **(d) Other high seas fish stocks**

In 2015, the General Assembly recognized that the general principles of the Agreement may also be applicable to discrete high seas fish stocks.<sup>33</sup>

The term “other high seas stocks” is used to refer to stocks that are not highly migratory or straddling, including “discrete high seas stocks.” The former term is generally preferred because the discreteness of such stocks is generally unknown.<sup>34</sup> While the Agreement does not expressly mention such stocks, the General Assembly has indicated that its principles should be considered to also apply to discrete high seas fish stocks.

Most discrete high seas fish stocks comprise deep-water demersal and pelagic species and include finfish and shellfish. FAO reports that a considerable amount of knowledge on these fisheries and on the harvested stocks has accumulated over the past 20 years, and now all, or almost all, are actively managed by RFMOs.<sup>35</sup> Important species that form deep water aggregations include orange roughy and the oreos and alfonsinos in lower-latitude fisheries; Patagonian toothfish in Southern Ocean fisheries; and pelagic armourhead and various species of Scorpaenidae found on both coasts of North America. FAO reports that a number of deep water species, treated as straddling stocks in the north-east Atlantic, also potentially make up other high seas fish stocks.<sup>36</sup>

#### **(e) Associated or dependent species**

The Agreement also requires States Parties to take measures for the conservation of “associated and dependent species.” Although the term “associated or dependent species” also appears in the Convention, there is no agreed definition of either term.

Associated species are considered to be species that are impacted by fishing activities, but are not part of the landed catch. Fisheries for straddling fish stocks, highly migratory fish stocks, and

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<sup>32</sup> A 1994 review of highly migratory and select straddling fish stocks that was taken as a starting point for the review in the report of the Secretary-General to the Review Conference in 2006 is available in “World review of highly migratory species and straddling stocks,” FAO Fisheries Technical Paper No. 337 (Rome, FAO, 1994); available at <https://www.fao.org/3/T3740E/T3740E00.htm>.

<sup>33</sup> A/RES/70/75, para. 37. Neither the term “discrete high seas fish stocks” nor the concept behind it are used in part VII of the Convention, which addresses the living resources of the high seas in general. The resolution called upon States, individually and through relevant RFMO/As, to adopt conservation and management measures in relation to discrete high seas stocks, inter alia in accordance with the general principles in the Agreement; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/414/49/PDF/N1541449.pdf?OpenElement>.

<sup>34</sup> For example, fish caught on distinct seamounts hundreds or thousands of kilometres apart do not necessarily belong to discrete separate biological units.

<sup>35</sup> FAO’s Input to the UN Secretary-General’s Comprehensive Report for the 2023 resumed Review Conference on the UN Fish Stocks Agreement, p. 25.

<sup>36</sup> Ibid., p. 26.

other high seas fish stocks impact other species as a result of (1) discards,<sup>37</sup> (2) physical contact of fishing gear with organisms (and habitat) that are not caught,<sup>38</sup> and (3) indirect processes.<sup>39</sup>

FAO reports on the status of the above fish stocks appear in the report of the Secretary-General to the Review Conference. In 2023, FAO reported that the majority of the straddling fish stocks and highly migratory fish stocks for which information is available were considered either maximally sustainably fished or overfished.<sup>40</sup> Considerable limitations in fisheries and biological data were also reported, with the result that around 30 percent of stocks were not assessed or information was not known, up from a quarter of the stocks as reported in 2016.<sup>41</sup>

## **6. Profile of current participation by States Parties and RFMO/As**

At the time of writing in 2023, there were 93 parties to the Agreement, including the European Union.<sup>42</sup>

In 2006 the Secretary-General reported to the Review Conference that there were nine key RFMOs with mandates to manage straddling fish stocks and highly migratory fish stocks.<sup>43</sup> Since then, three RFMOs have been established with high seas mandates;<sup>44</sup> however, two of them<sup>45</sup> exclude highly migratory fish stocks, in recognition of the competence of the relevant tuna RFMOs.

The Agreement, in addition to promoting the establishment of new RFMO/As, has also played an important role in the strengthening of existing RFMO/As by setting out their role and the minimum standards to which they would be expected to conform. In 2010, it was observed that the role of tuna organizations had been significantly strengthened through the Agreement and that these organizations were regarded as the appropriate mechanism for responding to the duties set out in the Convention for cooperation in managing highly migratory fish stocks.<sup>46</sup>

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<sup>37</sup> Many species are discarded depending on the target species, geographic area and depth. The highest discard rates are associated with shrimp and trawl fisheries. Discards of juveniles of the target species are common, as well as species with low commercial value. FAO reports suggest that 1.0 million seabirds and 8.5 million sea turtles are captured and discarded annually, with most probably captured in exclusive economic zones. By-catch of other species reported by FAO includes marine mammals and cold-water corals. However, where the use of by-catch reduction devices is mandated, the discard rate is relatively low. *Ibid.*, pp. 27–28.

<sup>38</sup> Trawling, bottom-set gillnets, longlines and pots are the primary types of fishing that result in physical contact between fishing gear and the seafloor. Bottom fishing conducted on habitats containing cold-water corals or sponges will result in damage to these habitats, which will be very slow to recover. Such habitats are called vulnerable marine ecosystems (VMEs), and they are susceptible to significant adverse impacts from bottom fisheries. *Ibid.*, p. 29.

<sup>39</sup> These processes involve designation by RFMO/As of areas within their high seas areas of competence that give protection to VMEs, including by limiting fisheries to the historical footprint and closing areas containing VMEs to bottom fishing. FAO reports that by 2022, the management of high seas bottom fisheries has been completely transformed with a high percentage of observer coverage, mandatory vessel position reporting through VMS, identification of where high seas vessels are fishing, and full catch reporting. *Ibid.*, p. 29.

<sup>40</sup> FAO's Input to the UN Secretary-General's Comprehensive Report for the 2023 resumed Review Conference on the UN Fish Stocks Agreement, p. 31.

<sup>41</sup> *Ibid.* Many challenges to conducting global analyses have remained the same, such as: the lack of a global data set that allows the data on the catch and the state of high seas fish stocks to be separated from data on catch from fisheries in the exclusive economic zones; stock status data standards among RFMO/As and with FAO are not always compatible; and the impact of information gaps on effective development and implementation of conservation and management measures, including those based on the precautionary approach.

<sup>42</sup> [https://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm).

<sup>43</sup> Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Commission for the Conservation of Southern Bluefin Tuna (CCSBT), Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tunas (ICCAT), Indian Ocean Tuna Commission (IOTC), Northwest Atlantic Fisheries Organization (NAFO), North-East Atlantic Fisheries Commission (NEAFC), South East Atlantic Fisheries Organisation (SEAFO) and Western and Central Pacific Fisheries Commission (WCPFC) 2004. In addition, Alaska pollock on the high seas in the Central Bering Sea is managed by the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Donut Hole Convention), and East Atlantic bluefin tuna and swordfish are managed by the General Fisheries Commission for the Mediterranean (GFCM). Para. 135 of the Secretary-General's report to the 2006 Review Conference; available at [www.undocs.org/A/CONF.210/2006/1](http://www.undocs.org/A/CONF.210/2006/1).

<sup>44</sup> They are the North Pacific Fisheries Commission (NPFC) 2015; Southern Indian Ocean Fisheries Agreement (SIOFA) 2012; and the South Pacific Regional Fisheries Management Organisation (SPRFMO) 2012. Information about the tuna organizations is available at <https://www.tuna-org.org/>.

<sup>45</sup> SIOFA and SPRFMO.

<sup>46</sup> Delegation of Norway to the Second Joint Tuna RFMOs Meeting, San Sebastian, 2009, "The UN Fish Stocks Agreement (UNFSA) and Tuna RFMO Members"; available at <https://www.tuna-org.org/documents/trfmo2/19%20annex%205.11%20eng.pdf>.



Many criteria used for the RFMO/A performance reviews have been drawn from the principles in the Agreement. Further, since the adoption of the Agreement, the RFMO/As have frequently used it as a basis or guide for conservation and management measures of the stocks under their auspices.

## **II IMPLEMENTATION REVIEW AND ASSISTANCE MECHANISMS AND PROCESSES**

Although the Agreement did not provide for any standing or annual Conference of the Parties to promote and strengthen its implementation, a number of processes have been developed to continue and strengthen progress towards the full and effective implementation of the Agreement. These include the Review Conference on the Agreement, the Informal Consultations of States Parties to the Agreement, and the Assistance Fund established pursuant to Part VII of the Agreement. In addition, the General Assembly has acted to strengthen implementation of the Agreement, *inter alia*, through its annual resolutions on sustainable fisheries.

### **(a) Review Conference<sup>47</sup>**

Article 36 of the Agreement calls for a Review Conference to be convened four years after its entry into force “with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.”<sup>48</sup> Its mandate, as provided in paragraph 2, is to:

Review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.<sup>49</sup>

In December 2004, the UN General Assembly requested the Secretary-General to make the necessary arrangements to convene the Review Conference called for by Article 36 during the “first part of 2006.”<sup>50</sup>

At the same time, the Secretary-General was requested to present to the Review Conference a comprehensive report, prepared in conjunction with the FAO, which would address the matters set out in the mandate provided in paragraph 2 of article 36.

At the Review Conference in 2006, delegations decided to suspend the Conference rather than close it, so that the Agreement could be kept under review through its periodic resumption. Thus, after the Review Conference was first convened in 2006, it has been resumed in 2010, 2016 and 2023.

Two essential reports related to each session of the Review Conference are, as follows:

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<sup>47</sup> The reviews are focused on conservation and management of stocks, mechanisms for international cooperation and non-members, MCS and enforcement and developing States and non-parties.

<sup>48</sup> Art. 36(1) provides for participation: “The Secretary-General shall invite to the conference all States parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.”

<sup>49</sup> Art. 36(2).

<sup>50</sup> A/CONF.210/2006/15, annex. See also A/61/63/Add.1, at paras. 151–60. Background is given at [https://www.un.org/depts/los/convention\\_agreements/Background%20paper%20on%20UNFSA.pdf](https://www.un.org/depts/los/convention_agreements/Background%20paper%20on%20UNFSA.pdf).

- The Secretary-General's report to the Review Conference,<sup>51</sup> prepared in conjunction with FAO, which reports on the status of the fish stocks<sup>52</sup> and the implementation of the recommendations of the previous session of the Review Conference based on reports by FAO and responses to a voluntary questionnaire by RFMO/As and States.
- The reports of the Review Conference, which contain a summary of discussions regarding inter alia the effectiveness of the Agreement in securing the conservation and management of the straddling fish stocks and highly migratory fish stocks,<sup>53</sup> as well as the agreed recommendations adopted by the Conference, which set priorities and actions for the way forward.<sup>54</sup>

The 2006 Review Conference addressed ways to give full effect to the Agreement, both through a substantive review and assessment and by agreeing on recommendations for strengthening the implementation of the Agreement. Recommendations were adopted relating to four cluster areas, each based on parts of the Agreement: the conservation and management of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance and compliance and enforcement; and developing States and non-parties.<sup>55</sup>

In subsequent resumptions of the Review Conference, assessments of the adequacy of the provisions of the Agreement and proposals to strengthen implementation have been based on these cluster areas.

Accordingly, In 2010,<sup>56</sup> 2016<sup>57</sup> and 2023,<sup>58</sup> the Review Conference conducted a review of the implementation of the recommendations adopted at each previous Review Conference and adopted additional recommendations that are recorded in the annex of each Review Conference report.<sup>59</sup> The recommendations, while not legally binding, provide additional guidance regarding the implementation of the provisions of the Agreement, and are therefore referenced, where appropriate, throughout this Guide.

## **(b) Informal Consultations of States Parties (ICSP)**

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<sup>51</sup> Reports are submitted to the Review Conference in accordance with para. 60 of General Assembly resolution 74/18 to assist it in discharging its mandate under art. 36(2) of the Agreement, A/CONF.210/2023/1, A/CONF.210/2016/1, A/CONF.210/2010/7, A/CONF.210/2006/15. All reports are available at [https://www.un.org/depts/los/convention\\_agreements/review\\_conf\\_fish\\_stocks.htm](https://www.un.org/depts/los/convention_agreements/review_conf_fish_stocks.htm).

<sup>52</sup> Including straddling fish stocks and highly migratory fish stocks; discrete high seas stocks; and non-target, associated and dependent species.

<sup>53</sup> Including a review of the implementation of the recommendations adopted at the previous session of the Review Conference and proposed means of strengthening, if necessary, the substance and methods of implementation of the provisions of the Agreement.

<sup>54</sup> For example, at the Review Conference in 2016, States Parties committed to improve, through the adoption and implementation of effective measures, the status of fish stocks and, by 2020, to effectively regulate harvesting; end overfishing and illegal, unreported and unregulated fishing and destructive fishing practices; and implement science-based management plans in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield. This commitment, consistent with the 2030 UN Agenda for Sustainable Development, was echoed at the 2022 Ocean Conference.

<sup>55</sup> A/CONF.210/2006/15, paras. 38–129; available at

A/CONF.210/2006/15 [https://www.un.org/depts/los/convention\\_agreements/review\\_conf\\_fish\\_stocks.htm](https://www.un.org/depts/los/convention_agreements/review_conf_fish_stocks.htm). See also David A. Balton and Holly R. Koehler, "Reviewing the United Nations Fish Stocks Treaty," *Sustainable Development Law and Policy*, vol. 7, No. 1 (2006): Ocean & Fisheries Law.

<sup>56</sup> A/CONF.210/2010/7, annex.

<sup>57</sup> A/CONF.210/2016/5, annex.

<sup>58</sup> A/CONF.210/2023/6, annex.

<sup>59</sup> In 2011, the General Assembly encouraged accelerated progress by States and RFMO/As regarding the recommendations adopted by the Review Conference. A/RES/65/38 on Sustainable Fisheries.

In December 2001, General Assembly resolution 56/13<sup>60</sup> requested the Secretary-General, once the Agreement entered into force, to consult with States that have either ratified or acceded to the Agreement, for the purposes of, among others, considering the implementation of the Agreement, making 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 pursuant to article 36 of the Agreement.

Informal Consultations of States Parties have been held most years since 2002<sup>61</sup> to consider the subregional, regional and global implementation of the Agreement and prepare for the Review Conference. A review of the implementation of specific provisions of the Agreement is usually undertaken.<sup>62</sup>

Since 2018, each ICSP has included focused discussion panels on designated themes, including the science-policy interface,<sup>63</sup> performance reviews of RFMO/As,<sup>64</sup> and implementation of an ecosystem approach to fisheries management.<sup>65</sup>

Key recommendations emerging from ICSP over the years focus on arrangements for the Review Conference and strengthening implementation of the Agreement, such as endorsement of the Part VII Fund by the General Assembly; high seas boarding and inspection; adoption of conservation and management measures by RFMO/As; criteria for assessing the effectiveness of the Agreement; promoting wider participation in the Agreement; and proposed means of further strengthening the substance and methods of implementation of the Agreement.

The discussions at the ICSP provide information on the practice of States and RFMO/As in implementing the various provisions of the Agreement, as well as perspectives on how to further strengthen its implementation.

### **(c) Assistance Fund under Part VII of the Agreement<sup>66</sup>**

Part VII of the Agreement addresses the “Requirements of Developing States.” Article 25 requires States Parties to cooperate in order to enhance the ability of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks; enable their participation in high seas fisheries for such stocks; and facilitate their participation in RFMO/As.

One of the forms of cooperation identified in Article 25 is the provision of financial assistance. In this regard, in accordance with Article 26 of the Agreement, States must cooperate to establish special funds to assist developing States in the implementation of the Agreement.

The General Assembly established the Assistance Fund under Part VII of the Agreement (the “Assistance Fund”) in 2003 at its fifty-eighth session to assist developing States Parties in the implementation of the Agreement, and terms of reference for the Assistance Fund were revised in

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<sup>60</sup> A/RES/56/13. 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; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/475/88/PDF/N0147588.pdf?OpenElement>.

<sup>61</sup> Consultations were not held in 2020–2021 because of COVID-19.

<sup>62</sup> Official reports detailing the agenda and outcomes are available at

[https://www.un.org/depts/los/convention\\_agreements/fish\\_stocks\\_agreement\\_states\\_parties.htm](https://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_states_parties.htm) and [https://www.un.org/depts/los/convention\\_agreements/fish\\_stocks\\_agreement\\_states\\_parties.htm#:~:text=NEW%3A%20Pursuant%20to%20paragraph%2069,13%20and%2014%20March%202023](https://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_states_parties.htm#:~:text=NEW%3A%20Pursuant%20to%20paragraph%2069,13%20and%2014%20March%202023).

<sup>63</sup> Thirteenth round, 2018.

<sup>64</sup> Fourteenth round, 2019.

<sup>65</sup> Fifteenth round, 2022.

<sup>66</sup> [https://www.un.org/Depts/los/convention\\_agreements/fishstocktrustfund/fishstocktrustfund.htm](https://www.un.org/Depts/los/convention_agreements/fishstocktrustfund/fishstocktrustfund.htm).

2019 at the fourteenth round of ICSP.<sup>67</sup> The revision allows for contributions through donor agreements for specific activities that meet any of the purposes of the Assistance Fund set forth in the revised terms of reference.

Following the revision, in 2021 the European Union and FAO entered into a donor agreement for a three-year project titled "Project of Assistance to Strengthen Participation in and Implementation of the UN Fish Stocks Agreement" with the objective of strengthening participation in the Agreement and the effective implementation of its provisions.<sup>68</sup>

The terms of reference set out the purposes for which the funds allocated to this project may be used,<sup>69</sup> including the following:

- Facilitating participation in meetings and activities of relevant RFMO/As and global organizations
- Supporting negotiations to establish new RFMO/As
- Enhancing the ability to develop a national legal basis for the implementation of effective flag State measures
- Capacity-building in key areas to implement the Agreement, as well as human resources development, technical training and technical assistance in relation to conservation and management of, and development of fisheries for, straddling fish stocks and highly migratory fish stocks
- Facilitating the exchange of information and experience on the implementation of the Agreement
- Assisting in meeting costs for the settlement of disputes between States parties to the Agreement

The terms of reference allow for contributions through donor agreements for specific activities that meet any of the purposes of the Assistance Fund elaborated in the revised terms of reference.<sup>70</sup>

Establishment of the Assistance Fund reflects the importance placed by the international community on achieving full and effective implementation of the Agreement.

The Assistance Fund<sup>71</sup> is administered by FAO as the implementing office for the Fund, in collaboration with the United Nations, in accordance with the terms of reference and appropriate arrangements made between them.

### **III. GENERAL BACKGROUND TO THE AGREEMENT AND RELATED INSTRUMENTS**

The Convention called for cooperation between coastal States and States whose nationals fish for straddling fish stocks and highly migratory fish stocks to ensure the conservation of these fish

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<sup>67</sup> ICSP14/UNFSA/ INF.3, 15 August 2019, annex II; available at [https://www.un.org/Depts/los/convention\\_agreements/ICSP14/ReportICSP14.pdf](https://www.un.org/Depts/los/convention_agreements/ICSP14/ReportICSP14.pdf).

<sup>68</sup> This project, valued at \$1,127,599, is the first specific project under the revised terms of reference for the Assistance Fund. The first instalment of \$451,040 was made by European Union in 2022, and the project is jointly implemented by FAO and DOALOS.

<sup>69</sup> Ibid, para. 16.

<sup>70</sup> Current terms of reference are available at [https://www.un.org/Depts/los/convention\\_agreements/fishstocktrustfund/TOR.pdf](https://www.un.org/Depts/los/convention_agreements/fishstocktrustfund/TOR.pdf).

<sup>71</sup> The Assistance Fund home page is at <https://www.un.org/oceancapacity/UNFSAfund>. The report on its status to the 2023 Review Conference, which includes information on contributions, expenditures and use of the Assistance Fund, is available in A/CONF.210/2023/2 at <https://documents.un.org/doc/undoc/gen/n23/073/56/pdf/n2307356.pdf?token=4rMkUsl2upxVviQmO2&fe=true>.

stocks,<sup>72</sup> but did not elaborate further on how this should be achieved. The general provisions of the Agreement reflect the intention to provide a framework for the implementation of these obligations.

In doing so, it is complemented by two other international fisheries instruments, negotiated contemporaneously under the auspices of FAO – the legally binding 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas<sup>73</sup> (the FAO Compliance Agreement) and the non-binding 1995 FAO Code of Conduct on Responsible Fisheries<sup>74</sup> (the FAO Code of Conduct), described below.

In the early 1990s, it was apparent that the implementation of these provisions of the Convention was insufficient to effectively control the ongoing depletion of the global fish stocks. This was of special concern for the straddling fish stocks and highly migratory fish stocks, for which international cooperation was required in order to ensure their effective management. Among other things, it was determined that there were insufficient criteria or mechanisms for allocations, enforcement by RFMO/As, and new entrants in a fishery. Moreover, it was noted that not all high seas areas were covered by RFMO/As.<sup>75</sup>

Other major concerns were the practice of reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures and the failure of flag States to fulfil their responsibilities with respect to their flag vessels, thereby undermining the effectiveness of the measures.

The 1992 United Nations Conference on Environment and Development agreed in Agenda 21 to convene an international conference under the auspices of the United Nations with a view to pursuing effective implementation of the provisions of the Convention on straddling fish stocks and highly migratory fish stocks.<sup>76</sup> The direct result of that conference was the adoption of the Agreement.

Around the same time, two other international fisheries instruments were developed at FAO to address, in part, similar concerns. These instruments were developed largely in parallel; they also promote the effective implementation of the provisions of the Convention, have linkages with the Agreement and are mutually reinforcing.

The FAO Compliance Agreement addresses the concerns about reflagging and flag State control. It specifies flag State responsibilities with respect to fishing vessels entitled to fly their flags and operating on the high seas, including obligations to authorize such operations and maintain records of such vessels. It also provides for strengthened international cooperation and increased transparency through requiring the exchange of information on high seas fishing.

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<sup>72</sup> Art. 63 requires cooperation to agree on measures necessary to coordinate and ensure the conservation and development of the straddling fish stocks; and art. 64 requires cooperation with a view to ensuring conservation and promoting the objective of optimum utilization of highly migratory species throughout the region, both within and beyond the exclusive economic zone, as well as establishment of and participation in an organization through which to cooperate where none exists.

<sup>73</sup> Available at <https://www.fao.org/3/X3130M/x3130m.pdf>.

<sup>74</sup> Available at <https://www.fao.org/3/v9878e/v9878e.pdf>.

<sup>75</sup> The United Nations Conference on Sustainable Development, Rio + 20, held in 2012, urged States Parties to the Agreement to fully implement that Agreement and called upon all States to implement the Code of Conduct for Responsible Fisheries and the FAO international plans of action and technical guidelines (para. 169, Outcome document; available at <https://sustainabledevelopment.un.org/index.php?menu=1298>). At Rio + 20, it was agreed to establish Sustainable Development Goals (SDGs), including SDG14 on Life below Water.

<sup>76</sup> Agenda 21, chap. 17, para. 17.49(e), UN Doc. A/CONF.151/26 (vol. II). In accordance with GA resolution 49/121, the mandate of the conference was to: (a) identify and assess existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks; (b) consider means of improving fisheries cooperation among States; and (c) formulate appropriate recommendations.

More specifically, the FAO Compliance Agreement applies to fishing vessels that are used or intended for fishing on the high seas<sup>77</sup> and its articles address flag State responsibility,<sup>78</sup> records of fishing vessels,<sup>79</sup> international cooperation,<sup>80</sup> and the exchange of information.<sup>81</sup>

The FAO Code of Conduct integrates provisions of the Convention and Agreement relating to the management of straddling fish stocks and highly migratory fish stocks.<sup>82</sup> It is global in scope and provides principles and standards applicable to the conservation, management and development of all fisheries. It addresses, inter alia, the capture of fish, fishing operations and fisheries research. Its objectives include the establishment of the following:

- Principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities; taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.
- Principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development.

FAO has published a wide range of technical guidelines on various aspects of the Code of Conduct to support its understanding and implementation.<sup>83</sup>

The Code expressly provides that it is to be interpreted and applied in conformity with the relevant rules of international law as reflected in the Convention, and in a manner consistent with the relevant provisions of the Agreement.<sup>84</sup>

## IV. THE AGREEMENT

### PREAMBLE

#### Overview and background

The Preamble of the Agreement opens by recalling the relevant provisions of the Convention, the normative framework that the Agreement was developed to implement. The Convention balanced the rights, jurisdiction and duties of coastal States in areas under national jurisdiction, the exclusive economic zone<sup>85</sup> and the qualified right all States have for their nationals to engage in fishing on the high seas.<sup>86</sup>

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<sup>77</sup> Art. II.

<sup>78</sup> Art. III.

<sup>79</sup> Art. IV.

<sup>80</sup> Art. V.

<sup>81</sup> Art. VI.

<sup>82</sup> Arts. 7.13 and 7.32. It also provides, among others, that the Code is to be interpreted and applied in a manner consistent with the relevant provisions of the Agreement (art. 3.2).

<sup>83</sup> The FAO Technical Guidelines are available at

<https://www.fao.org/fishery/en/publications?page=1&external=true&f=series%3D%22FAO%20Technical%20Guidelines%20for%20Responsible%20Fisheries%22;lang%3D%22English%22#search>. At the time of writing, 37 Technical Guidelines had been published.

<sup>84</sup> Art. 3 – Relationship with other international instruments.

<sup>85</sup> The rights and duties in the exclusive economic zone, in particular, are described in art. 56, and more generally part V of the Convention (Exclusive Economic Zone). Among others, coastal States, in exercising their rights and performing their duties in the exclusive economic zone are required to have due regard for the rights and duties of other States and act in a manner compatible with the Convention (art. 56[2]).

<sup>86</sup> Art. 116, and more generally part VII of the Convention (High Seas). Among others, the right for a State's nationals to engage in fishing on the high seas is subject to the rights and duties as well as the interests of coastal States provided, inter alia, in art. 63(2) and arts. 64 to 67. Arts. 117–19 address further duties of States whose nationals engage in fishing on the high seas.

The preamble of a treaty provides context for the interpretation of its provisions.<sup>87</sup> In the case of the Agreement, the preamble may provide background regarding the aims of its drafters and some of the common understandings that underpinned the work of the Conference.

## Preamble

### *Preamble*

*The States Parties to this Agreement,*

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

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

*Resolved to improve cooperation between States to that end,*

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

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

*Committing themselves to responsible fisheries,*

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

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

*Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,*

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

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<sup>87</sup> Vienna Convention on the Law of Treaties, art. 31.

*Have agreed as follows:*

## 1. Highlights

The preamble of the Agreement, inter alia, recalls the relevant provisions of the Convention, expresses the Parties' determination to ensure the long-term sustainable use of straddling fish stocks and highly migratory fish stocks and their resolve to improve cooperation between States. To that end, it calls for more effective enforcement by flag States, port States and coastal States of the relevant conservation and management measures.

It states that States Parties are seeking to address in particular the inadequate management of high seas fisheries in many areas and the overutilization of some resources,<sup>88</sup> noting particular problems,<sup>89</sup> conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations.

A need is also recognized for special assistance to developing States for their effective participation in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks.

In accordance with standard practice, the preamble affirms that "matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law."

## PART I GENERAL PROVISIONS

### Overview and background

In general, Part I serves to situate the Agreement by describing the resources and geographic areas to which it applies, who can be considered a State party, and its relationship to the Convention, which provides the legal framework within which all activities on the oceans and seas must be carried out.

The articles in this Part do not generally require implementation except to ensure that the use of terms and scope in any implementing instrument are consistent with those in article 1.

### PART I

<b>Article 1</b>	<b>Use of terms and scope</b>
<b>Article 2</b>	<b>Objective</b>
<b>Article 3</b>	<b>Application</b>
<b>Article 4</b>	<b>Relationship between this Agreement and the Convention</b>

<sup>88</sup> As identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development.

<sup>89</sup> They include unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States.



This Part reflects the goal in Agenda 21, which had given rise to the Conference in order to negotiate the conclusion of the Agreement, that the results should be “fully consistent with the provisions of the United Nations Convention on the Law of the Sea.”<sup>90</sup> Article 2 on the objective and article 4 on the relationship between the Agreement and the Convention attest to the nature of the Agreement as an implementing agreement of the Convention and were considered as a matter of course.<sup>91</sup>

The 1993 FAO Compliance Agreement relating to high seas fishing also referred to Agenda 21 and the Convention. It recognized the right of all States “for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in “the Convention.”<sup>92</sup> This sensitivity was carried forward in article 1 on the use of terms and scope.<sup>93</sup>

## Article 1 - Use of terms and scope

### *Article 1 - Use of terms and scope*

#### *1. For the purposes of this Agreement:*

*(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;*

*(b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;*

*(c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and*

*(d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.*

#### *2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.*

*(b) This Agreement applies mutatis mutandis:*

*(i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and*

*(ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention*

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

<sup>90</sup> Agenda 21, chap. 17C, para. 17.49(e). The historical context history is elaborated in Ichiro Nomura, *Background, Negotiation History and Article-by-Article Analysis of the United Nations Agreement on Fish Stocks and the FAO Compliance Agreement*, 2019.

<sup>91</sup> Nomura, pp. 25, 27.

<sup>92</sup> Preamble.

<sup>93</sup> In particular, in relation to the definition of “conservation and management measures,” which “are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement.” Nomura, p. 22.

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

## 1. Highlights

Article 1 defines the terms “Convention,” “conservation and management measures,” “fish,” “arrangement” and “States Parties.” It provides that “fish” includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention.<sup>94</sup>

These definitions also, inter alia, clarified that the term “States Parties” includes those entities referred to in the Convention as eligible to become parties to it, including competent intergovernmental organizations,<sup>95</sup> and that the Agreement applies mutatis mutandis (with necessary changes) to other fishing entities whose vessels fish on the high seas.

## Article 2 - Objective

### Article 2

#### Objective

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

## 1. Highlights

Article 2 provides that the objective of the Agreement is “to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.”

This objective set out in article 2, although explicit in the title of the Agreement itself, together with article 4 below, further cements the Agreement’s place as an “implementing agreement” to the Convention.

While the implementation of article 63 of the Convention on “Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it” and article 64 on “Highly migratory species” is at the heart of the

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<sup>94</sup> Organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

<sup>95</sup> The relevant parts of art. 305 of the Convention refer to: “(c) all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(d) all self-governing associated States which, in accordance with their respective instruments of association, have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(e) all territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514 (XV) and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of those matters;

(f) international organizations, in accordance with Annex IX.”

Agreement, other provisions of the Convention may also be considered relevant. These are set out in annex 3, which describes key provisions of the Convention that are elaborated in the Agreement.

### Article 3 - Application

#### *Application*

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

### 1. Highlights

The Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except for the following:

- Articles 6 and 7 apply also to marine areas under the national jurisdiction of a State, subject to the applicable legal regimes.
- Coastal States must apply the general principles in Article 5 in the conservation and management of straddling fish stocks and highly migratory fish stocks in areas under national jurisdiction.
- In considering the capacity of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance under the Agreement, Part VII applies, mutatis mutandis, with respect to areas under national jurisdiction.

While not directly addressed in the Agreement, the General Assembly has also recognized that the principles of the Agreement apply to discrete high seas fish stocks – stocks situated completely on the high seas.<sup>96</sup>

### Article 4 - Relationship between this Agreement and the Convention

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<sup>96</sup> A/RES/76/71. Resolution adopted by the General Assembly on 9 December 2021, paras. 48 and 69.

#### Article 4

##### *Relationship between this Agreement and the Convention*

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

### 1. Highlights

The Agreement is an implementing agreement to the Convention. Its article 4 therefore provides that “Nothing in the Agreement prejudices the rights, jurisdiction and duties of States under the Convention. The Agreement must be interpreted and applied in the context of and in a manner consistent with the Convention.”

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

### Overview and background

Part II sets out in significant depth three fundamental aspects necessary for the conservation and management of straddling fish stocks and highly migratory fish stocks: it specifies actions that States must take to implement a range of general principles to be used in the formulation of conservation and management measures; describes the scope and actions for the application of the precautionary approach; and elaborates a process and requirements to adopt compatible measures to ensure that those put in place for the high seas and those in place for exclusive economic zones are mutually reinforcing.

#### PART II

<b>Article 5</b>	<b>General Principles</b>
<b>Article 6</b>	<b>Application of the precautionary approach</b>
<b>Article 7</b>	<b>Compatibility of conservation and management measures</b>

In this Part :

- Article 5, **General Principles** describes the general principles to be applied by States Parties in giving effect to their duty to cooperate in accordance with the Convention.
- Article 6, **Application of the precautionary approach** requires wide application of the precautionary approach in relation to fish stocks and the marine environment and provides a framework and guidelines for its implementation.
- Article 7, **Compatibility of conservation and management measures** requires measures adopted for areas under national jurisdiction and for the high seas be compatible to ensure the conservation and management of stocks in their entirety.

Although all three articles are synergistic because of their interrelationships, articles 5 and 6 are most closely related because the precautionary approach is required as a general principle and article 6 elaborates its application. The requirements for compatibility of measures in article 7 implement both a precautionary approach and an ecosystem approach. This includes, *inter alia*, requiring States to make every effort to apply provisional measures pending agreement on compatible conservation and management measures, and by its applicability to the stocks in their entirety.

Part II of the Agreement elaborates the basic duties of coastal States for the conservation and management of living resources described in Part V of the Convention, “Exclusive Economic Zone.” Two key articles in the Convention, 61 and 62, address the conservation and utilization of living resources, respectively. The Agreement further amplifies the cooperation required for conservation and management of the fish stocks between States directly or through RFMO/As for the straddling fish stocks in article 63(2) and directly or through international organizations for highly migratory species in article 64. A list of highly migratory species is contained in Annex I of the Convention.

The application of the Agreement to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction<sup>97</sup> also builds upon key provisions in Part VII of the Convention, “High Seas,”<sup>98</sup> namely, articles 116 to 119. These articles elaborate the qualified right of vessels of all States to fish on the high seas;<sup>99</sup> the duty of States to adopt with respect to their nationals, measures for the conservation of the living resources of the high seas;<sup>100</sup> cooperation of States in the conservation and management of living resources;<sup>101</sup> and conservation of the living resources of the high seas.<sup>102</sup>

The various obligations of flag States for the conservation and management of relevant fish stocks that occur in the high seas are further developed in the Agreement.

The development of Part II of the Agreement was also influenced by other important international legal processes from the early 1990s.

The conceptual bases and importance of the precautionary and ecosystem approaches, as well as the protection of biodiversity, to which the Agreement attaches importance, had been strengthened by the 1992 United Nations Conference on Environment and Development.<sup>103</sup>

Two key concepts in Part II of the Agreement, international cooperation and exchange of information in relation to high seas fisheries, had also been addressed in the FAO Compliance Agreement.

The general principles and underlying aims in the Agreement and the FAO Code of Conduct share many similarities including references to ecosystems, biodiversity, the precautionary approach, species associated with or dependent on the target species, excess fishing capacity, selective and environmentally safe fishing gear and cooperation through RFMO/As. The FAO Code of Conduct expressly provides that it is to be interpreted and applied in a manner consistent with the Agreement.<sup>104</sup>

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<sup>97</sup> Art. 3.

<sup>98</sup> Sect. 2: Conservation and management of the living resources of the high seas.

<sup>99</sup> Art. 116.

<sup>100</sup> Art. 117.

<sup>101</sup> Art. 118.

<sup>102</sup> Art. 119.

<sup>103</sup> Including through adoption of Agenda 21, - Chapter 17 on Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources;  
<https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

<sup>104</sup> Art. 3.2.

## Article 5 - General principles

### Article 5

#### General principles

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

*(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;*

*(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;*

*(c) apply the precautionary approach in accordance with article 6;*

*(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;*

*(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;*

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

*(g) protect biodiversity in the marine environment;*

*(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;*

*(i) take into account the interests of artisanal and subsistence fishers;*

*(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;*

*(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and*

*(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.*

## **1. Highlights**

Article 5 provides 12 general principles for use by coastal States and States fishing on the high seas to give effect to their duty to cooperate under the Agreement.

They include the following:

- (a) Adopting measures to ensure long-term sustainability of the fish stocks and promote the objective of their optimum utilization;
- (b) Ensuring that the measures are based on the best scientific evidence available and other factors;
- (c) Applying the precautionary approach;
- (d) Assessing the impacts of fishing, other human activities and environmental factors on target stocks;
- (e) Adopting measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- (f) Minimizing pollution, waste, discards and other catch by lost or abandoned gear, catch of non-target species and developing appropriate gear and techniques;
- (g) Protecting biodiversity;
- (h) Preventing or eliminating excess fishing capacity;
- (i) Taking into account the interests of artisanal fishers;
- (j) Collecting and sharing certain data and research information;
- (k) Promoting and conducting scientific research and developing appropriate technologies;
- (l) Implementing and enforcing the measures through effective monitoring, control and surveillance (MCS).

It should be recalled that such principles, drawn largely from the Convention, are applicable also to the conservation and management of such stocks in areas within national jurisdiction. The application of the same set of principles may facilitate the compatibility of measures adopted with respect to areas within national jurisdiction and beyond areas of national jurisdiction in accordance with article 7. The General Assembly has stated that the principles of the Agreement may also be relevant to the conservation and management of discrete high seas stocks.

The highlights and implementation guidance and practices for the general principles are described below under various key headings. Several of the headings relate to two or more of the principles that are referenced in the text. An Implementation checklist appears at the end of the article.

## **General principles – adoption of measures**

### **1. Highlights**

The duty of coastal States and States fishing on the high seas to adopt measures is addressed in Article 5, paragraphs (a) and (b). The measures must ensure the long-term sustainability of the stocks

and promote the objective of their optimum utilization, and the States must ensure that the measures are, as follows:

Based on the best scientific advice available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and take into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.<sup>105</sup>

Measures must meet the various components of the obligation, including being based on the best scientific advice available, being designed to maintain or restore stocks at levels capable of producing maximum sustainable yield; and take into account fishing patterns, the interdependence of stocks, and any generally recommended international minimum standards.

## 2. Implementation guidance and practice

Examples of some key international instruments are presented in table 1, together with indicative regional and national sources and processes for developing, adopting and implementing measures.

Table 1

### Key international instruments and regional/national sources, institutional arrangements and processes addressing development, adoption and implementation of measures

<i>Key instruments, arrangements and processes for adopting measures</i>	
<i>International</i>	
United Nations	1982 United Nations Convention on the Law of the Sea
	1992 Convention on Biological Diversity <sup>106</sup>
	1995 United Nations 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
	2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction. <sup>107</sup>
	2030 UN Agenda for Sustainable Development <sup>108</sup>
	Annual General Assembly resolutions on oceans and the law of the sea and sustainable fisheries <sup>109</sup>
FAO	FAO 1993 Compliance Agreement <sup>110</sup>

<sup>105</sup> Art. 5(b). This repeats the requirements in art. 61(3) of the Convention concerning conservation of the living resources, and is also related to arts. 116–19 of the Convention, which apply to the high seas.

<sup>106</sup> <https://www.cbd.int/convention/text/>, and associated Cartagena Protocol and Nagoya Protocols. Note also Aichi Target 11 on other effective area-based conservation measures (OECMs) adopted by the 2012 Conference of the Parties to the Convention on Biological Diversity: “By 2020, at least ... 10 percent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures [now referred to as OECMs] and integrated into the wider ... landscapes and seascapes.”

<sup>107</sup> [https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch\\_XXI\\_10.pdf](https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf).

<sup>108</sup> <https://sdgs.un.org/2030agenda>. Of significance, Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

<sup>109</sup> Including the annual resolutions on Sustainable Fisheries and Oceans and Law of the Sea.

<sup>110</sup> Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas.



	FAO 1995 Code of Conduct for Responsible Fisheries and Technical Guidelines <sup>111</sup>
	FAO International Plans of Action (IPOAs) <sup>112</sup>
	FAO 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
	FAO Guidelines
	<ul style="list-style-type: none"> <li>• 2008 FAO</li> <li>• International Guidelines for the Management of Deep-sea Fisheries in the High Seas<sup>113</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2011 FAO International Guidelines on Bycatch Management and Reduction of Discards<sup>114</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2014 FAO Voluntary Guidelines on Flag State Performance<sup>115</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2014 FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication<sup>116</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2017 FAO Voluntary Guidelines for Catch Documentation Schemes<sup>117</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2019 FAO Voluntary Guidelines on the Marking of Fishing Gear<sup>118</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• 2022 FAO Voluntary Guidelines for Transshipment<sup>119</sup></li> </ul>
Other	1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora <sup>120</sup>
	FAO Strategies <sup>121</sup>
<i>Regional – RFMO/As</i>	
	Constitutive instrument
	Conservation and management measures <sup>122</sup>
	Institutional arrangements including committees, working groups, etc.
	Procedural, operational and communications standards and practices
	Plans, strategies
	Reports of sessions
	Compliance reviews
	Performance reviews and indicators
	Cooperation and collaboration at regional and international levels
<i>National</i>	
	Participation in RFMO/As and implementation of conservation and management measures adopted by them
	Legislation, policy, plans, strategies
	Institutional arrangements and capacity, including legal, management, effective MCS
	Procedural, operational and communications standards and practices <sup>123</sup>

<sup>111</sup> Several technical guidelines have been published to facilitate implementation of various aspects of the Code of Conduct, for example, Technical Guidance No. 4 on Fisheries Management: FAO, Fishery Resources Division and Fishery Policy and Planning Division, *FAO Technical Guidelines for Responsible Fisheries*, No. 4 (Rome, FAO, 1997), <https://www.fao.org/3/w4230e/w4230e.pdf>.

<sup>112</sup> 1999 IPOA-Sharks, 1999 IPOA of Fishing Capacity, 1999 IPOA-Seabirds, 2001 IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), <https://www.fao.org/fishery/en/code/ipoa>.

<sup>113</sup> <https://www.fao.org/documents/card/en/c/b02fc35e-a0c4-545a-86fb-4fc340e13b52>.

<sup>114</sup> <https://www.fao.org/3/ba0022t/ba0022t.pdf>.

<sup>115</sup> <https://www.fao.org/publications/card/en/c/1905a0ab-0396-460c-aeb5-1badf6ca83ba>.

<sup>116</sup> <https://www.fao.org/documents/card/en/c/555a0b00-5220-45fc-ada7-43acd6a95912>. Note para. 5.19 of the Guidelines: “Where transboundary and other similar issues exist, e.g. shared waters and fishery resources, States should work together to ensure that the tenure rights of small-scale fishing communities that are granted are protected.”

<sup>117</sup> <https://www.fao.org/iuu-fishing/resources/detail/en/c/1132200/>.

<sup>118</sup> <https://www.fao.org/3/ca3546t/ca3546t.pdf>.

<sup>119</sup> <https://www.fao.org/iuu-fishing/resources/detail/en/c/1638082/>.

<sup>120</sup> <https://cites.org/eng/disc/text.php>.

<sup>121</sup> Strategy for Improving Information on Status and Trends of Capture Fisheries, FISHCODE STF – Strategy for Improving Information on Status and Trends of Capture Fisheries Strategy and Outline Plan for Improving Information on Status and Trends of Aquaculture.

<sup>122</sup> Conservation and management measures may comprise measures for fisheries management, MCS and statistics.

<sup>123</sup> The international Fisheries Transparency Initiative (FiTI) provides transparency standards; <https://www.fiti.global/>.

Note: MCS = Monitoring, control and surveillance.

The framework in Table 1 is only a basic guide indicating some starting points that have been useful for proceeding with implementation at all three interconnected levels – international, regional and national.

Three issues relating to the adoption of measures addressed at the Review Conference are elaborated as case studies in annex 4. They are conservation and management measures for sharks and deep-sea fisheries, strengthening the science-policy interface, and establishment of rebuilding and recovery strategies.

## **General principles – application of precautionary and ecosystem approaches – general<sup>124</sup>**

### **1. Highlights**

The precautionary and ecosystem approaches are both addressed as general principles in paragraphs (c), (d), (e), (f) and (g) of article 5, which calls upon States to:

- (c) Apply the precautionary approach in accordance with article 6.
- (d) Assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks.
- (e) Adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened.
- (f) Minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.
- (g) Protect biodiversity in the marine environment.

The importance of applying the precautionary and ecosystem approaches to fisheries management has been emphasized by the Review Conference in each of its meetings as well as in many other international instruments and forums.<sup>125</sup> The approaches are considered together in the Review Conference<sup>126</sup> and in contexts such as the management of deep-sea fisheries and by-catch noted below. Their general synergies are introduced in this section, and the precautionary approach is elaborated below under article 6.

The *precautionary approach* requires States to be more cautious when information is uncertain, unreliable or inadequate. In implementing the approach, States must improve decision-making and information-sharing and develop certain data collection and research programmes, adopt plans, and apply or take into account certain scientifically based factors and measures.<sup>127</sup>

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<sup>124</sup> The application of the precautionary and ecosystem approaches are usually considered together at the Review Conference, but the achievement of compatible measures, required in sect. 7 and considered as an ecosystem-based measure, is addressed separately.

<sup>125</sup> A/CONF.210/2023/1, para. 51, note 26: See, for example, resolution 76/296, paras. 13 and 13(f) and resolution 76/71, paras. 17 and 18.

<sup>126</sup> For example, A/CONF.210/2023/1, paras. 51–63.

<sup>127</sup> They are in art. 6(3) and include implementing improved techniques for dealing with risk and uncertainty; applying the guidelines in Annex II and determining stock-specific reference points and actions to take in case they are exceeded; taking into account specified uncertainties and other specified information; developing data collection and research programmes to assess the impact of fishing on non-target and associated dependent species and their environment.

There is no universally agreed definition of what constitutes an *ecosystem approach* in the context of fisheries management, but it is important for the long-term sustainability of fish stocks, and needed to ensure healthy and resilient ecosystems that could better resist anthropogenic and natural stressors. The application of the ecosystem approach is elaborated below, and explains the need to assess the broader impacts of fishing. The importance of taking into account the impacts of fishing on the marine environment as well as various external impacts are generally recognized.

As a guide, FAO explains the Ecosystem Approach to Fisheries Management in terms of the approach, the main management planning steps and procedures, pathways and timelines for planning,<sup>128</sup> and has developed a helpful toolbox for its application.<sup>129</sup>

Article 5(f) regarding marine pollution and 5(g) regarding protecting biodiversity are also relevant to the implementation of an ecosystem approach. In particular, the duty of States to protect biodiversity in the marine environment, a general principle in article 5(g) of the Agreement, is often integrated with the precautionary and ecosystem approaches.

## 2. Implementation guidance and practice

At the international level, FAO activities in supporting implementation of the precautionary and ecosystem approaches by RFMO/As and States have included public actions, capacity development and collection of information and data.<sup>130</sup> The key publications are shown in table 2.

Table 2

### Key FAO publications supporting implementation of the precautionary and ecosystem approaches to fisheries management

<i>Key FAO publications on implementation of the precautionary and ecosystem approaches</i>	
<i>Precautionary approach</i>	
1996 Technical Guidelines on a Precautionary Approach to Capture Fisheries and Species Introductions <sup>131</sup>	Explains the precautionary approach to fisheries management, research, technology and species introduction and the need to incorporate harvest control rules <sup>132</sup> in management plans to specify what action must be taken when specified deviations <sup>133</sup> from the operational targets and constraints are observed.
<i>Precautionary approach and ecosystem approach</i>	
2009 International Guidelines for the Management of Deep-sea Fisheries in the High Seas <sup>134</sup>	Calls for all management measures taken by States or RFMO/As to be based on the precautionary approach and the ecosystem approach to fisheries. <sup>135</sup>

<sup>128</sup> <https://www.fao.org/fishery/en/eaf-net/about/what-is-eaf>.

<sup>129</sup> <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1235016/>.

<sup>130</sup> Including the development of management plans for fisheries, projects and programmes; support to regional fisheries' bodies to formally adopt the ecosystem approach and its integrated principles as part of their mandate, guidance materials, tools and capacity-development initiatives, as well as the compilation of lessons learned. FAO also undertook capacity-building to assist States in implementing an ecosystem approach to fisheries through national policy and legal frameworks.

<sup>131</sup> <http://www.fao.org/3/a-w3592e.pdf>.

<sup>132</sup> Harvest control rules are pre-agreed plans for how management measures will adjust in relation to information about the stock status. The plans can be in the form of functions, formulas or mathematical expressions and the indicators can be based on either monitoring data or models. Harvest control rules range from basic, constant catch strategies, under which catch levels do not change, to multistep rules that set allowable catch based on triggers.

<sup>133</sup> The specification should include minimum data requirements for the types of assessment methods to be used for decision-making.

<sup>134</sup> <https://www.fao.org/documents/card/en/c/b02fc35e-a0c4-545a-86fb-4fc340e13b52>.

<sup>135</sup> In 2004, the United Nations General Assembly had called upon States and RFMO/As to apply the precautionary approach for the interim prohibition of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems; UNGA resolution 59/25, para. 66.

2011 FAO International Guidelines on Bycatch Management and Reduction of Discards <sup>136</sup>	Assists States and RFMO/As in implementing an ecosystem approach to fisheries through effective management of by-catch and reduction of discards. Criteria included under the management framework include setting quotas in accordance with the precautionary approach where information on the by-catch population is limited.
<i>Ecosystem approach</i>	
2012 Ecosystem approach to Fisheries Toolbox <sup>137</sup>	Aims at national and local fisheries management authorities, including fishery managers, scientists and stakeholders looking for practical solutions they can apply given their circumstances and resources.
2021 Legislating for an ecosystem approach to fisheries – Revisited <sup>138</sup>	Provides current information on how the ecosystem approach to fisheries (EAF) is being implemented through national legal frameworks of selected countries in Africa and includes updated data. Contributes to the knowledge on the current global and regional legal frameworks for an EAF, which are vital for EAF implementation purposes.
2023 Information on the ecosystem approach in the FAO <i>Regional Fishery Body Secretariats' Network Magazine</i> <sup>139</sup>	Includes EAF experiences of several RFMO/As, guidance on area-based conservation measures and the scientific basis for implementation of an EAF.
FAO EAF legal reports <sup>140</sup>	Assess the extent to which the relevant policy and legal frameworks of 26 countries align with the EAF.

At the regional level, FAO describes priorities and focus areas for greater cooperation and coordination among RFMO/As, for example by addressing climate change; the deterioration of environmental conditions; the negative impacts of fishing activities on ecologically related species; and endangered, threatened and protected species and protecting biodiversity.<sup>141</sup>

The general practice of RFMO/As in implementing the precautionary and ecosystem approaches has included amendments to constitutive instruments,<sup>142</sup> policy decisions, application in decision-making and adoption in management decisions and conservation and management measures.

In the past, RFMO/As tended to focus their attention on, and adopt conservation and management measures for, priority species and only after a quantitative stock assessment had been completed. However, increasingly, RFMO/As are adopting measures for mandated species and for associated and dependent species, for which data are limited, based on risk assessments. Some of the trends in risk assessments include the following:

<sup>136</sup> <https://www.fao.org/3/ba0022t/ba0022t.pdf>. See also the 2021 FAO *Technical Guidelines for Responsible Fisheries*, 4. *Guidelines to Prevent and Reduce Bycatch of Marine Mammals in Capture Fisheries*; available at <https://www.fao.org/3/cb2887en/cb2887en.pdf>.

<sup>137</sup> <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1235016/>. The toolbox also introduces principles and methodologies for the implementation of the approach.

<sup>138</sup> FAO, *Legislating for an Ecosystem Approach to Fisheries – Revisited. An Update of the 2011 Legal Study on the Ecosystem Approach to Fisheries*. FAO EAF-Nansen Programme Report No. 36 (Rome, FAO, 2021), <https://www.fao.org/fishery/en/publications/283472>.

<sup>139</sup> FAO, *Ecosystem Approach to Fisheries (EAF) – Regional Fishery Body Secretariats' Network Magazine*, No. 21 (December 2022) (Rome, 2023), <https://www.fao.org/fishery/en/publication/301728?lang=en>.

<sup>140</sup> Available at <https://www.fao.org/in-action/eaf-nansen/publications/programme-reports/en/>.

<sup>141</sup> FAO, “A regional framework among regional fishery bodies – Scaling up cooperation and coordination towards sustainable fisheries” (Rome, FAO2023), <https://doi.org/10.4060/cc5979en>.

<sup>142</sup> RFMO/As established under FAO are obliged to take into account the precautionary approach because of their status in FAO.

- In data-poor situations, risk assessment techniques are increasingly being employed by technical bodies and the technical advice from these assessments is being better understood and accepted by managers through strengthened scientists/managers dialogue.
- Incorporation of risk into assessment models is increasing, especially in the formulation of management procedures.
- Tuna-RFMOs cooperate through a joint working group on management strategy evaluations and have developed a Kobe II strategy matrix, which provides alternative risk-based options for meeting management targets.

Processes and activities reported by RFMO/As that support implementation of both the precautionary and ecosystem approaches include the following:

- Integration of precautionary and ecosystem approaches in a management strategy evaluation process
- Improvement of scientific research in support of fisheries management
- Collecting data regarding the effects of fishing on dependent species
- Stock assessments and risk assessments
- Addressing impacts of bottom fisheries on vulnerable marine ecosystems, including the closure of areas to protect the ecosystems

States incorporate the precautionary and ecosystem approaches into fisheries management, including through legislation, policies, strategies and measures relating to conservation and management and monitoring, control and surveillance.<sup>143</sup> A range of plans have been adopted in various States that elaborate implementation, including integrated fisheries management plans, multi-year management plans and national plans of action.

States also incorporate both approaches into various management tools, including marine protected areas, benthic protection areas, and the regulation or prohibition of bottom fishing gear. These tools may also be used to protect species such as marine turtles, seabirds and sharks.

## **General principles – application of an ecosystem approach**

### **1. Highlights**

While the Agreement does not contain the term “ecosystem approach,” it is incorporated into paragraphs (c) and (d) of article 5, as described above. These provisions call for an assessment of the impacts of fishing, other human activities and environmental factors; and adopting conservation and management measures. Both activities apply to “species belonging to the same ecosystem or associated with or dependent upon the target stocks,” as follows:

- (c) Assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks.
- (d) Adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to

<sup>143</sup> For example, on 21 February 2023, the European Commission published a “fisheries and oceans” package, including an action plan for reconciling marine protection and fisheries. With this plan, the Commission is hoping to achieve more consistent implementation of European Union environmental and fisheries policies; [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2023\)747917](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)747917). Some Pacific examples are a Solomon Islands policy review on the ecosystem approach to fisheries management at <https://digitalarchive.worldfishcenter.org/bitstream/handle/20.500.12348/993/3691.pdf?sequence=1&isAllowed=y>, and a plan on implementation of the ecosystem approach to fisheries management in Papua New Guinea at <https://digitalarchive.worldfishcenter.org/bitstream/handle/20.500.12348/993/3691.pdf?sequence=1&isAllowed=y>.

maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened.

## 2. Implementation guidance and practice

Most RFMO/As are increasingly using multiple elements of an ecosystem approach in their regular work,<sup>144</sup> including the following:

- Independent integrated science
- Regional biodiversity conservation objectives
- Specific biodiversity-focused measures
- Cross-sectoral cooperation
- Identification of hurdles to be overcome to make future progress

More specifically, some RFMO/As undertake the following implementation activities for an ecosystem approach:

- Adoption of area-based management measures
- Assessing the impacts of fishing on the ecosystem through the assessment and management of the main target species and by-catch species
- Development of a comprehensive ecosystem road map applying a three-tiered approach to ecosystem management
- Adoption in principle of an ecosystem productivity reference point to complement single stock assessments and to help inform management decisions regarding the potential risk of ecosystem overfishing
- Consideration of socioeconomic aspects of management measures, especially when determining allocations

State practice for implementing an ecosystem approach together with the precautionary approach is generally described below, noting mechanisms such as integrated and multi-year management plans, legislation and policies.

In addition, some specific measures have included the following:

- Harvest strategies
- Prohibitions based on size, breeding period, area or gear type, including prohibitions on beam and bottom trawling
- Limitations on the type, design or size of fishing gear including mesh size, sorting grids or hook design
- Alerting devices to reduce by-catches
- Monitoring, control and surveillance measures
- National plans of action
- Closed and marine protected areas

General lessons learned for successful implementation of the ecosystem approach have been identified as broad stakeholder participation; appropriate data; adequate governance structures; integration of fisheries in broader processes; continuous support at the technical, financial and institutional levels; and a management system that is resistant to external drivers.<sup>145</sup>

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<sup>144</sup> ICSP15/UNFSA/ INF.3, 22 June 2022. Fifteenth round of Informal Consultations of States Parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 17 to 19 May 2022), para. 39.

<sup>145</sup> ICSP15/UNFSA/ INF.3. Ibid., para. 27.

Some challenges for future improvement have been identified as accessing biodiversity monitoring and considering social and economic aspects.<sup>146</sup> A continuing focus on multispecies issues and climate change effects for ecosystems and relevant stocks will support reviews of progress in applying the ecosystem approach.

## **Application of an ecosystem approach – by-catch management and discards**

### **1. Highlights**

Article 5(f) is aimed at reducing the harmful effects of fishing operations and calls on States to do, as follows:

Minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species (both fish and non-fish species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

This would contribute to the reduction of adverse impacts on the ecosystem caused by, among others, unmanaged by-catch and unregulated discards.

### **2. Implementation guidance and practice**

The 2011 FAO International Guidelines on Bycatch Management and Reduction of Discards<sup>147</sup> provides a basis for implementation, used as appropriate with the 2021 FAO Technical Guidelines to Reduce Marine Mammal Bycatch in Capture Fisheries.<sup>148</sup> A related concern is mitigating of the incidental catch of seabirds, addressed in the 1999 FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries.<sup>149</sup>

These Guidelines were designed to provide guidance on management factors ranging from an appropriate regulatory framework to the components of a good data collection programme, and include the identification of key management considerations and measures necessary to ensure the conservation of target and non-target species as well as affected habitats.

The 2023 Review Conference recommended the minimization of by-catch, reduction or elimination of discards, and reduction of post-release mortality, taking into account the relevant targets under the Sustainable Development Goals, inter alia, by improving selectivity of fishing gear; improving safe handling and release guidelines; reducing catch of juveniles; adopting environmentally friendly material for fishing gear; and improving data collection and monitoring, control and surveillance. It also encouraged the widest application of the 2011 FAO International Guidelines on By-catch Management and Reduction of Discards of FAO and the FAO Technical Guidelines to Reduce Marine Mammal Bycatch in Capture Fisheries.<sup>150</sup>

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<sup>146</sup> ICSP15/UNFSA/ INF.3. Ibid., para. 39.

<sup>147</sup> <https://www.fao.org/3/ba0022t/ba0022t.pdf>.

<sup>148</sup> <https://www.fao.org/3/cb2887en/cb2887en.pdf>.

<sup>149</sup> <https://www.fao.org/3/X3170E/x3170e02.htm>.

<sup>150</sup> A/CONF.210/2023/6, annex, part A, para. 16.



FAO provided global and regional updates on by-catch and discards to the 2018 meeting of the Committee on Fisheries on by-catch and discards,<sup>151</sup> and a third FAO assessment of global marine fisheries discards was published in 2019.<sup>152</sup> The assessment did the following:

- Explained the difficulty in assessing the effectiveness of fisheries management actions on the amount and practice of discards – among others, many regulations are inconsistently enforced, and their implementation is often less strict than intended.
- Signalled that piecemeal approaches in many by-catch and discards management measures can result in unintended cross-taxa conflicts, where regulations designed to reduce by-catch and/or discards of one species or species group may increase by-catch and/or discards of another.
- Concluded that an understanding of the relative importance of factors affecting indirect fishing mortality is necessary for estimating total fishing-induced mortality and for designing and implementing mitigation measures.<sup>153</sup>

#### *Examples of RFMO/A practice*

Many RFMO/As have adopted measures for by-catch management and discards, including for sharks, sea turtles and seabirds. Among others, the RFMO/A measures relate to the following:

- Adoption of conservation and management measures for species where by-catch had become significant, or where they had developed into new fisheries
- Inclusion of by-catch and discards in catch quotas
- Mitigation of by-catch
- Inclusion of by-catch management in measures for the conservation of vulnerable marine ecosystems
- Prohibitions on retaining undersized fish
- General bans on discards in some fisheries
- Restrictions on non-selective gear and fish-aggregating devices
- The development and use of selective, environmentally safe and cost-effective fishing gear and techniques
- Reporting requirements
- Adoption of an action plan on by-catch and discards to improve effectiveness in the collection and use of data
- Publication of an annual landing table featuring figures on retained and discarded catches of various species to monitor the non-target catch in the RFMO Convention Area
- Observer programmes

#### *Examples of State practice*

Several States report the following actions to implement by-catch management and reduction of discards:

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<sup>151</sup> It provides information on FAO's current work in addressing issues of by-catch and discards, as they relate to fisheries management, fishing operations and practices, and sustainable livelihoods, in support of the International Guidelines on Bycatch Management and Reduction of Discards, <https://www.fao.org/3/MX045en/mx045en.pdf>.

<sup>152</sup> M.A. Pérez Roda and others, eds., *A Third Assessment of Global Marine Fisheries Discards*. FAO Fisheries and Aquaculture Technical Paper No. 633 (Rome, FAO, 2019). Licence: CC BY-NC-SA 3.0 IGO; <https://www.fao.org/3/ca2905en/ca2905en.pdf>.

<sup>153</sup> This was based on an examination of approaches to accounting for and mitigating against pre-catch, post-capture and ghost fishing mortalities.



- Policy and management strategies to manage the impacts of commercial fishing on non-target and protected species
- Integrated fisheries management plans
- Managing specific species (e.g. sharks, marine mammals, reptiles, penguins and other seabirds)
- Regulations requiring the instalment of trawl exclusion devices or sorting grids for juvenile and unwanted by-catch
- Regulations for using nets and special tools to avoid accidental by-catch to preserve marine species
- Imposing landing obligations
- Prohibiting the use of mesh nets for fishing or regulating mesh size in fisheries
- Requiring industrial fleets to report discards and by-catch by haul in electronic fishing logs
- Establishing mechanisms to monitor and reduce discards
- Diagnosis and reduction of discard practices and by-catch
- Commissioning relevant scientific studies
- Developing and trialling by-catch monitoring and mitigation measures

### **Application of an ecosystem approach – abandoned, lost or otherwise discarded fishing gear, including marine debris<sup>154</sup>**

#### **1. Highlights**

The duty to minimize, among others, pollution, waste and catch by lost or abandoned gear forms part of the general principle in article 5(f), described in the previous section.

The impact of abandoned, lost or otherwise discarded fishing gear (ALDFG) on the marine environment and its living resources can be significant. Such gear can continue to fish as so-called “ghost gear,” with long-term damaging effects on fish stocks and may also cause navigational and associated safety hazards. ALDFG also contributes to plastic pollution in the ocean.

#### **2. Implementation guidance and practice**

At the international level, a range of actions to address marine debris have been taken, including in the 2030 Agenda for Sustainable Development,<sup>155</sup> the Convention on Migratory Species<sup>156</sup> and in regional forums. In 2022, the International Maritime Organization (IMO) committed to developing a mandatory goal-based requirement for marking fishing gear under annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL).<sup>157</sup> The intergovernmental negotiating committee to develop an international legally binding instrument on plastic pollution, including in the marine environment, convened under the United Nations Environment Assembly, also began its work in 2022.

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<sup>154</sup> Art. 5(f).

<sup>155</sup> <https://sdgs.un.org/2030agenda>.

<sup>156</sup> <https://www.cms.int/>.

<sup>157</sup> Under MARPOL, annex V, garbage includes all kinds of food, domestic and operational waste, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically. Garbage does not include fresh fish and parts thereof generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities. Regulations for the prevention of pollution by garbage from ships are contained in annex V of MARPOL; <https://www.imo.org/en/ourwork/environment/pages/garbage-default.aspx>.

The 2018 FAO Voluntary Guidelines on the Marking of Fishing Gear<sup>158</sup> is designed to contribute to sustainable fisheries, improve the state of the marine environment, and enhance safety at sea by combatting, minimizing and eliminating ALDFG and facilitating the identification and recovery of such gear.

FAO has also developed a manual for the marking of fishing gear<sup>159</sup> and a publication on the operationalization of the Voluntary Guidelines in the IOTC area of competence, which, among others, provides a framework for marking fishing gears and Fish Aggregating Devices (FADs).<sup>160</sup>

In 2022, FAO published a study on legal aspects of ALDFG, which, among others, describes the basic legal and institutional arrangements in four case study jurisdictions that have adopted legal measures to address ALDFG: Australia, the European Union and its Member States, Norway and the United States of America.<sup>161</sup>

The IMO-FAO GloLitter Partnerships Project<sup>162</sup> assists developing countries to prevent and reduce marine litter, especially plastic marine litter, within the maritime transport and fisheries sectors and identify opportunities for the reduction of plastic use in both industries.

#### *Examples of RFMO/A practice*

Measures taken by RFMO/As to implement this ALDFG requirement focus on preventing and mitigating the impacts of ALDFG, and generally include reporting, gear marking and retrieval requirements. Key measures include the following:

- Prohibiting the use of certain types of fishing gear
- Requiring members to report any accidental loss of fishing gear
- Prohibiting the abandonment or discard of gear except in case of force majeure
- Promoting biodegradable materials for fishing gear
- Conservation measures concerning gear retrieval and reporting lost gear
- Measures concerning the responsible management of drifting Fish Aggregating Devices, such as carrying equipment to facilitate their retrieval, the prohibition of mesh netting on fish aggregating devices, and the encouragement of use or transition to non-plastic and biodegradable materials in the construction of Fish Aggregating Devices

#### *Examples of State practice*

Measures implemented by States to minimize the impact of ALDFG have included the following:

- Requiring the retrieval or reporting of ALDFG gear
- Prohibiting the abandonment of gear
- Tagging and GPS tracking of gear
- Promoting information-sharing and transparency concerning lost gear
- Participation in workshops and trials on gear-marking technology

#### **Application of an ecosystem approach – development of area-based management tools<sup>163</sup>**

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<sup>158</sup> <https://www.fao.org/3/ca3546t/ca3546t.pdf>; in endorsing the Guidelines, the FAO Committee on Fisheries also supported the development of a comprehensive global strategy to tackle issues relating to ALDFG and to support implementation of the Guidelines.

<sup>159</sup> The manual is a supplement to the Voluntary Guidelines on the Marking of Fishing Gear, and provides practical instructions on marking methods for the main types of fishing gear in order to identify ownership; <https://www.fao.org/responsible-fishing/resources/detail/es/c/1633386/>.

<sup>160</sup> <https://www.fao.org/fishery/en/publication/298706>.

<sup>161</sup> <https://www.fao.org/publications/card/fr/c/CB8071EN/>.

<sup>162</sup> <https://www.imo.org/en/ourwork/partnerships/projects/pages/glolitter-partnerships-project.aspx>.

<sup>163</sup> Art. 5(d), (e) and (g).

## 1. Highlights

Area-based management tools are, inter alia, grounded in the principles relating to the ecosystem approach, as well as the protection of habitats, marine biodiversity and vulnerable marine ecosystems.<sup>164</sup>

### General principles – Protection of biodiversity in the marine environment

## 1. Highlights

Article 5(g) calls upon States to do the following:

“Protect biodiversity in the marine environment.”

The preamble of the Agreement refers to the need to preserve biodiversity.

## 2. Implementation guidance and practice

Two key international legal instruments that focus on biodiversity are the 1992 Convention on Biological Diversity<sup>165</sup> (CBD) and the BBNJ Agreement.<sup>166</sup>

The CBD defines “biological diversity” as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.”

The BBNJ Agreement addresses a package of issues under the overall objective of ensuring the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination. The BBNJ Agreement is not a fisheries management treaty and some of its provisions do not apply to fishing or fishing-related activities,<sup>167</sup> but it has the potential to improve the health and productivity of fish stocks through several of its provisions, particular those on the establishment of area-based management tools, including marine-protected areas.

Some of the general principles and approaches<sup>168</sup> contained in the BBNJ Agreement are the same as, or similar to those in the Agreement, including the precautionary and ecosystem approaches and the use of the best available science and scientific information. They also include, among others, an integrated approach to ocean management, equity; and an approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity.

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<sup>164</sup> The applicable general principles of art. 5 relate to the ecosystem approach in paras. (d) and (e) and to the protection of biodiversity in the marine environment in para. (g).

<sup>165</sup> Available at <https://www.cbd.int/doc/legal/cbd-en.pdf>. Under the Convention, the United Nations Biodiversity Conference (COP-15) held 7–9 December 2022 in Montreal, Canada, addressed biodiversity loss. Nearly 200 States agreed to the Kunming-Montreal Global Biodiversity Framework, with quantifiable targets to halt and reverse biodiversity loss of all life on Earth, both on land and in the ocean.

<sup>166</sup> [https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch\\_XXI\\_10.pdf](https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf).

<sup>167</sup> Part II on marine genetic resources does not apply to: (a) fishing regulated under relevant international law and fishing-related activities; or (b) fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under this Part. Art. 10 (2).

<sup>168</sup> Art. 7.

The 2023 Review Conference called upon States to protect habitats, marine biodiversity and vulnerable marine ecosystems through developing area-based management tools, to be done on a case-by-case basis and in accordance with the best available scientific information, the precautionary and ecosystem approaches and international law.<sup>169</sup> The need to protect biodiversity in deep-sea ecosystems is widely recognized, as noted in this Guide.<sup>170</sup>

## **General principles – Prevention or elimination of overfishing and excess fishing capacity<sup>171</sup>**

### **1. Highlights**

Article 5(h) calls upon States to:

Take measures to prevent or eliminate overfishing and excess fishing capacity and ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources.

Practices to achieve this have included reduction of fishing capacity and elimination of subsidies. Both are described below.

### **Prevention or elimination of overfishing and excess fishing capacity – reduction of fishing capacity<sup>172</sup> to levels commensurate with the sustainability of fish stocks**

### **2. Implementation guidance and practice**

It has been widely recognized at international levels that overcapacity has contributed to the decline in many of the world's fisheries. This issue is currently addressed in the 2030 Agenda for Sustainable Development and was previously consolidated in the 1999 FAO International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity).<sup>173</sup> FAO published technical guidelines in 2008 on managing fishing capacity<sup>174</sup> with the purpose of aiding stakeholders and fisheries managers in the development of national and regional plans of action for the management of fishing capacity.

#### *Examples of RFMO/A practice*

Several RFMO/As reported having taken action to control fishing capacity in fisheries managed by them, through the following:

- Guidelines and recommendations on the management of fishing capacity based on the FAO IPOA-Capacity
- Expansion limitations and capacity and catch limits for certain species
- Limits on certain types of vessels as well as authorized vessel lists
- Criteria for the allocation of fishing opportunities

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<sup>169</sup> A/CONF.210/2023/6, annex, part A, para. 6(a).

<sup>170</sup> Among others, it is addressed in the text relating to art. 6 of the Agreement. See also A/RES/76/71 on Sustainable Fisheries; para. 192 recognizes the importance and value of deep-sea ecosystems and the biodiversity they contain.

<sup>171</sup> Art. 5(h).

<sup>172</sup> Fishing capacity is defined as the quantity of fish that can be taken by a fishing unit, for example, an individual, community, vessel or fleet, assuming that there is no limitation on the yield from the stock (FAO, Technical Guidance No. 4 on Fisheries Management [1997]). It is usually expressed in terms of some measure of vessel size, such as gross tonnage, hold capacity, or horsepower. The issue is essentially one of having too many vessels or excessive harvesting power. FAO, *Fisheries Management. 3. Managing Fishing Capacity*, FAO Technical Guidelines for Responsible Fisheries, No. 4, Suppl. 3 (Rome, FAO, 2008),

<https://www.fao.org/3/i0318e/i0318e00.htm#:~:text=The%20FAO%20International%20Plan%20of,use%20of%20their%20fish%20stocks.>

<sup>173</sup> <https://www.fao.org/fishery/en/ipoa-capacity>.

<sup>174</sup> <https://www.fao.org/in-action/globefish/publications/details-publication/en/c/346115/>.

- Closures
- Implementing recommendations on capacity reduction arising from their performance reviews

### *Examples of State practice*

States have taken the following actions:

- Developing national plans of action for fishing capacity
- Policy flexibility and licence retirement programmes
- Imposing moratoriums on fishing vessel licences
- Reduction in the number of licences issued to foreign vessels
- Licence withdrawal
- Closures
- Transferable quotas
- Maintaining registries
- Setting adjustment targets
- Promoting and providing financial support for capacity management in RFMO/As
- Adopting measures to improve transparency, including information-sharing with the global record of fishing vessels, regional registries and RFMO/As records of fishing vessels as well as the publication of aggregate data on commercial fishing licences

**Prevention or elimination of overfishing and excess fishing capacity – elimination of subsidies that contribute to illegal, unreported and unregulated fishing; overfishing and overcapacity**

### **1. Highlights**

The Agreement has no direct requirement relating to subsidies for fisheries activities, but does require States parties to prevent and eliminate overfishing and excess fishing capacity in article 5(h). States are, inter alia, required to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fisheries resources. An important element to meeting this obligation is to curb harmful fisheries subsidies.

In this regard, the outcomes of the 2016 Review Conference called on States to implement the commitment in the 2030 Agenda for Sustainable Development to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing; eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing; and refrain from introducing new such subsidies.<sup>175</sup>

Subsequently, the World Trade Organization (WTO) Agreement on Fisheries Subsidies, adopted in 2022, was a significant step forward for ocean sustainability, by prohibiting harmful fisheries subsidies, a key factor in the widespread depletion of the world's fish stocks. It prohibits subsidies to vessels or operators engaged in IUU fishing and for fishing or fishing-related activities regarding an overfished stock or unregulated high seas fishing.<sup>176</sup>

<sup>175</sup> A/CONF.210/2016/5, annex, part A, para. 8(a). The commitment is in Target 14.6 under Goal 14.

<sup>176</sup> Arts. 3, 4 and 5. For the Agreement to become operational, two-thirds of members have to deposit their instruments of acceptance with the WTO. It was agreed to continue negotiations on outstanding issues, with a view to making recommendations for additional provisions that would further enhance the disciplines of the Agreement; [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm). The European Union committed 1 million euros to the WTO Fisheries Funding Mechanism to provide technical assistance and capacity-building with respect to commitments and derivation of benefits under the Agreement on Fisheries Subsidies. FAO collaborated closely with WTO on fishing subsidies, including providing technical advice to the negotiations concerning the application of international instruments

Because this Agreement marks a turning point in the effective elimination of subsidies and carries new commitments for the future, past regional and State practices are not elaborated.

## **General principles – Interests of artisanal and subsistence fishers**

### **1. Highlights**

Article 5(i) calls on States to do the following:

“Take into account the interests of artisanal and subsistence fishers.”

More specifically, in recognizing the special requirements of developing States under part VII of the Agreement,<sup>177</sup> States must, when cooperating to establish conservation and management measures, take into account the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers among others.

### **2. Implementation guidance and practice**

In addressing the interests of subsistence and artisanal fisheries, the importance of the effective participation and engagement of developing States in small-scale fisheries management was noted at the 2023 Review Conference.<sup>178</sup> The need to ensure a participatory approach to small-scale fisheries management was highlighted, and the implementation of the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication<sup>179</sup> was encouraged. The importance of the FAO Code of Conduct for Responsible Fisheries in promoting sustainable trade and protecting the rights and well-being of fish-dependent communities was also highlighted.

The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>180</sup> provide guidance for improving the policy, legal and organizational frameworks that regulate tenure rights; for enhancing the transparency and administration of tenure systems; and for strengthening the capacities and operations of public bodies, private sector enterprises, civil society organizations and people concerned with tenure and its governance.

In general terms, the General Assembly through sustainable fisheries resolutions has encouraged States to recognize the importance and role of small-scale, artisanal and subsistence fisheries and to support their long-term environmental, economic and social sustainability.<sup>181</sup>

## **General principles – Data collection and sharing of information**

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designed to combat illegal, unreported and unregulated fishing as well as on approaches towards stock assessment and issues related to overcapacity. FAO further indicated that it would continue to offer support during the implementation phase of the recently approved Agreement.

<sup>177</sup> Art. 24(2)(b). Recognition of the special requirements of developing States.

<sup>178</sup> A/CONF.210/2023/6, para. 130.

<sup>179</sup> <https://www.fao.org/documents/card/en/c/555a0b00-5220-45fc-ada7-43acd6a95912>. Note para. 5.19 of the Guidelines: “Where transboundary and other similar issues exist, e.g. shared waters and fishery resources, States should work together to ensure that the tenure rights of small-scale fishing communities that are granted are protected.”

<sup>180</sup> The guidelines place the governance of tenure within the context of national food security, and are intended to contribute to the progressive realization of the right to adequate food, poverty eradication, environmental protection and sustainable social and economic development. They are available at <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/416990/>.

<sup>181</sup> For example, A/RES/77/118, para. 189.

## 1. Highlights

Article 5(j) calls on States to do, as follows:

Collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in annex I of the Agreement, as well as information from national and international research programmes.

Annex I of this article provides standard requirements for the collection and sharing of data. It consists of seven articles that provide general principles defining the parameters for collection, compilation and exchange. It describes requirements for basic fishery data, types of vessel-related data, reporting specified logbook data and verification and exchange of data.

General data collection and sharing of information is described below, followed by a separate description of FAO data arrangements.

## 2. Implementation guidance and practice

The need for improvements to data collection and the sharing of information for fisheries management have been consistently called for by the Review Conference and recognized by the 2030 Agenda for Sustainable Development, among others.

Typical mechanisms that promote data collection include vessel-monitoring systems, electronic reporting systems, electronic port State measures reporting systems, mandatory logbooks, dockside monitoring, other monitoring, control and surveillance tools and observers.

### *Examples of RFMO/A practice*

RFMO/As have adopted a wide range of recommendations, requirements and resolutions relevant to data collection and information-sharing, including those concerning the following:

- Catch data and fishing effort
- Access to data and information related to monitoring, control and surveillance
- Data management and dissemination
- Reporting
- Data standards

Programmes and measures to improve data collection and information-sharing that some RFMO/As have adopted include the following:

- Procedures for the management and use of confidential data
- Participation with FAO and other organizations in efforts towards the standardization of protocols for data exchange and the sharing of information
- Promotion of harmonization between RFMO/As on fishing vessel reporting
- Development of an internet-based system for submission of data requirements and other management obligations
- Development of electronic reporting systems to improve data collection concerning bans on targeting fishing and by-catch

### *Examples of State practice*

State practice is wide-ranging, but an important focus is on the support that many provide for more extensive exchange of data and information, including the following:

- Provision of data to the FAO global database
- Promoting the development of agreements and arrangements between RFMO/As to share information where there were linkages or overlaps in fish species or areas of competence
- Committing to improve cooperation on data-sharing
- Implementing national data-collection programmes that contribute to the work of RFMO/As
- Enhancing regional coordination among European Union members, including developing regional work plans on issues related to data collection, handling, storage and transmission
- Supporting the improvement of data capacity for developing countries, including through FAO
- Sharing data sets broadly with external users, including with non-governmental organizations (NGOs) such as the Global Ghost Gear Initiative<sup>182</sup>

### **Data collection and sharing of information – FAO data arrangements and the global fisheries statistics database<sup>183</sup>**

Generally, FAO has played an important role in supplying catch and effort data and fishery-related information, setting standards and guidelines, offering direct capacity-enhancement support to States and providing a platform for improved data and sharing. Two key features are noted below.

- FAO maintains a global database of fisheries statistics and information.<sup>184</sup> FAO cooperates in international efforts directed towards the development of standard concepts, definitions, classifications and methodologies for the collection and collation of fishery statistics, most notably through the Coordinating Working Party on Fisheries Statistics,<sup>185</sup> which has published a handbook that documents its core business.<sup>186</sup>
- The FAO Fisheries and Resources Monitoring System (FIRMS) partnership<sup>187</sup> is aimed at facilitating access by decision makers to a wide range of high-quality information on the status and trends of global marine fishery resources, fisheries and their management.

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<sup>182</sup> <https://www.ghostgear.org/>.

<sup>183</sup> Art. 5(j) and annex I, art. 7(2).

<sup>184</sup> <https://www.fao.org/fishery/en/information>; since its inception, the FAO Fisheries and Aquaculture Division has built up statistical databases that are publicly accessible. The data are provided by FAO members and verified from other sources wherever possible. The reliability of the analysis is based on the data, and the quality of the advice to which it gives rise, depends on the reliability and quality of the data. To this end FAO seeks to continue supporting and strengthening national capacity in the collecting, analysis, and use of accurate, reliable and timely data. In this respect FAO has a unique role in supporting the management and development of the aquaculture and fishery sectors.

<sup>185</sup> <https://www.fao.org/cwp-on-fishery-statistics/background/en/>; functional since 1960, the purpose of the Coordinating Working Party on Fishery Statistics is to continually review fishery statistics requirements for research, policymaking and management; agree on standard concepts, definitions, classifications and methodologies for the collection and collation of fishery statistics; and submit proposals for the coordination and streamlining of statistical activities among the relevant intergovernmental organizations.

<sup>186</sup> This includes the statistical concepts, classifications, data exchange protocols and codes that are recommended by the Coordinating Working Party on Fisheries Statistics (CWP) for use in capture fishery and aquaculture statistics globally. Much as this core business may be applied in a wider context, however, users are advised to ensure the validity of such applications. *The CWP Handbook of Fishery Statistics* indicates the principles applied by the international agencies, and no attempt has been made to include details of national systems, many of which, having been developed for specific national purposes, may differ from those employed internationally. There are also related pages on information-sharing practices that outline principles, standards, protocols and practices needed to establish harmonized data collection, reporting and dissemination systems, and pages on regional references that set out CWP members' best practices in implementing CWP recommendations; <https://www.fao.org/cwp-on-fishery-statistics/handbook/en/>.

<sup>187</sup> <https://firms.fao.org/firms/en>; FIRMS draws together a unified partnership of international organizations, regional fishery bodies and, in the future, national scientific institutes, collaborating within formal agreement to report and share information on fisheries resources. For effective fisheries information management, FIRMS also participates in the development and promotion of agreed standards. The FIRMS system is part of the Fisheries Global Information System (FIGIS). Information provided by the partners is organized in a database and published in the form of fact sheets. This system provides the data owner with tools to ensure controlled dissemination of high-quality and updated information.



The 2023 Review Conference recommended that States Parties and RFMO/As fulfil their obligations in connection with the collection and submission of data and information on fisheries to FAO and consider ways to improve both:

- The collection of data and information on fisheries both within and beyond areas of national jurisdiction
- Their dissemination to FAO, recognizing confidentiality requirements in national law<sup>188</sup>

In this context, FAO could help to coordinate among RFMO/As the adoption of common concepts, data types and formats to facilitate data exchange at the global level.

FAO has collaborated with some RFMO/As to revise the FAO global fisheries statistics database to provide information for the stocks to which the Agreement applies and for discrete high seas stocks on the basis of where the catch was taken. The aim was to modify the boundaries of the statistical divisions so separate data could be obtained for catches taken within and beyond areas under national jurisdiction.<sup>189</sup> In this context, it is believed that the global statistics database would be significantly enhanced if all relevant States and/or RFMO/As collected and made available such information to FAO to disseminate.

## **General principles – scientific research and technologies**

### **1. Highlights**

Article 5(k) calls on States to do, as follows:

“Promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management.”

The promotion and conduct of scientific research and development of technologies are addressed in a general manner in instruments and forums, where certain aspects and priorities are emphasized. They would apply to all levels – national, regional and international.

### **2. Implementation guidance and practice**

Some examples of priority aspects for promoting scientific research that have been raised recently in the General Assembly and the 2023 Review Conference include the following:

- Increased collaboration in scientific research<sup>190</sup>
- Climate change<sup>191</sup>
- Strengthening implementation of an ecosystem approach<sup>192</sup>

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<sup>188</sup> A/CONF.210/2023/6, annex, part A, para. 11.

<sup>189</sup> This related to the north-east, south-east and eastern central Atlantic Ocean, and in 2009, the FAO worldwide review of bottom fisheries in the high seas provided data on such fisheries.

<sup>190</sup> A/CONF.210/2023/6, para. 50; A/RES/76/71, para. 230. Many RFMO/As are already collaborating with their members and each other, but this has not been formalized more broadly. A 2019 independent study noting the need for collaborative research in fisheries science that spans traditional boundaries, mapped a co-authorship network from a data set comprising 73,240 scientific articles, drawn from 50 journals and published between 2000 and 2017. It concluded that the groupings were more regional than global. Shaheen Syed and others, “Mapping the global network of fisheries science collaboration,” 10 June 2019; available at <https://onlinelibrary.wiley.com/doi/full/10.1111/faf.12379>.

<sup>191</sup> A/CONF.210/2023/6, para. 50.

<sup>192</sup> A/CONF.210/2023/6, annex, part A, para. 2(d); A/RES/76/71, para. 187.

- Protecting marine ecosystems, including the prevention of significant adverse impacts on vulnerable marine ecosystems<sup>193</sup>
- Managing deep-sea fishery resources<sup>194</sup>
- Targeting scientific research in making Assistance Fund contributions<sup>195</sup>

Concerning the development of technologies and in recognition of emerging technologies, examples of priority aspects for their use include the following:

- Technologies to strengthen effective control over fishing vessels, including closed-circuit television, vessel monitoring systems, vessel monitoring centres, electronic reporting, observer coverage and vessel lists<sup>196</sup>
- By-catch mitigation technology<sup>197</sup>

The transfer of technology is addressed in guidelines and by the General Assembly, respectively, as shown below.

- The Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology<sup>198</sup> aim to apply the provisions of part XIV (Development and transfer of marine technology) of the Convention. Marine technology refers, inter alia, to instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean and coastal areas.
- Distant water fishing nations are requested, when negotiating access agreements and arrangements with developing coastal States, to give greater attention to the transfer of technology.<sup>199</sup>

## General principles – monitoring, control and surveillance

### 1. Highlights

Article 5(l) requires States to do, as follows:

“Implement and enforce conservation and management measures through effective monitoring, control and surveillance.”

The implementation of this principle is addressed in this Guide in relation to the parts V (Duties of the flag State) and VI (Compliance and enforcement) of the Agreement.

### 3. Implementation checklist

IMPLEMENTATION CHECKLIST	
ARTICLE 5	

<sup>193</sup> A/RES/76/71, para. 197.

<sup>194</sup> A/RES/76/71, para. 197.

<sup>195</sup> A/CONF.210/2023/6, annex, part A, para. 4(c).

<sup>196</sup> A/CONF.210/2023/6, annex, part C, para. (1)(g).

<sup>197</sup> A/RES/76/71, para. 148.

<sup>198</sup> Available at <https://repository.oceanbestpractices.org/handle/11329/856>.

<sup>199</sup> A/RES/76/71, para. 237.

## GENERAL PRINCIPLES

### UNFSA

- 1) Have effective conservation and management measures been adopted and implemented to ensure long-term sustainability and promote optimum utilization of straddling fish stocks and highly migratory fish stocks? (UNFSA, art. 5[a])
- 2) Are the measures based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account:
  - Fishing patterns
  - interdependence of stocks
  - Any generally recommended international minimum standards (UNFSA, art. 5[b])
- 3) Do the measures apply the precautionary approach in accordance with article 6? (UNFSA, art. 5[c])
- 4) Has there been an assessment of the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks? (UNFSA, art. 5[d])
- 5) Have conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks been adopted where necessary, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened? (UNFSA, art. 5[e])
- 6) Have the following been minimized through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques:
  - Pollution
  - Waste
  - Discards
  - Catch by lost or abandoned gear
  - Catch of non-target species (includes both fish and non-fish species)
  - Impacts on associated or dependent species, in particular endangered species (UNFSA, art. 5[f])
- 7) Do the measures protect biodiversity in the marine environment? (UNFSA, art. 5[g])
- 8) Are measures taken to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources? (UNFSA, art. 5[h])
- 9) Are the interests of artisanal and subsistence fishers taken into account? (UNFSA, art. 5[i])
- 10) Is complete and accurate data concerning fishing activities collected and shared in a timely manner on, inter alia:
  - Vessel position

- Catch of target and non-target species
- Fishing effort

as set out in annex I, as well as information from national and international research programmes? (UNFSA, art. 5[j])

11) Are scientific research and the development of appropriate technologies promoted and conducted in support of fishery conservation and management? (UNFSA, art. 5[k])

12) Are conservation and management measures implemented and enforced through effective monitoring, control and surveillance? (UNFSA, art. 5[l])

### Supplementary

1) **Sharks.** Have actions or measures been taken to fully implement the International Plan for the Conservation and Management of Sharks for directed and non-directed shark fisheries, based on the best available scientific information, through, inter alia:

- (a) Limiting catch or fishing effort, by requiring flag vessels to collect and regularly report data on shark catches?<sup>200</sup>
- (b) Where scientific information is uncertain or inadequate, not increasing fishing effort in directed shark fisheries and urgently establishing science-based management measures to ensure the long-term conservation, management and sustainable use of shark stocks and to prevent further declines of vulnerable or threatened shark stocks?
- (c) Fully utilizing dead sharks caught in the context of sustainably managed fisheries?

(1999 FAO IPOA-Sharks, GA resolution 77/118, para. 30)

2) **Deep-sea fisheries.** Have actions been taken to achieve the following:

- (a) Use, as applicable, the full set of criteria in the 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas to identify where vulnerable marine ecosystems occur or are likely to occur, as well as for assessing significant adverse impacts on such ecosystems, including their associated and dependent species?
- (b) Ensure that impact assessments, including for cumulative impacts of activities covered by the assessment, are conducted for all types of bottom-fishing activities consistent with the Guidelines, particularly paragraph 47 thereof, are reviewed periodically and are revised whenever a substantial change in the fishery has occurred or there is relevant new information, and that, where such impact assessments have not been undertaken, they are carried out as a priority before authorizing bottom-fishing activities?
- (c) Ensure that the precautionary approach is applied, including in the utilization of impact assessments to inform management decisions and consideration of significant adverse impacts on vulnerable marine ecosystems, including their associated and dependent species?
- (d) Ensure that conservation and management measures adopted by States and RFMO/As are based on and updated on the basis of the best available scientific information, noting in particular the need to improve the effective implementation of thresholds and move-on rules.

<sup>200</sup> Including species-specific data, discards and landings, undertaking, including through international cooperation, comprehensive stock assessments of sharks, reducing shark by-catch and by-catch mortality.

(2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas and GA resolution 61/105, para. 80)

- 3) **Science-policy interface.** Is the science-policy interface being strengthened to further improve the application of the ecosystem approach to fisheries management and to address uncertainties and changes such as those related to the impacts of climate change in support of the development of adaptive fisheries management strategies?  
(GA resolution 77/118, para. 201)
- 4) **Establishment of rebuilding and recovery strategies.** Are rebuilding and recovery strategies and plans established and implemented where a stock is identified as being overfished, which should include time frames and probabilities of recovery aimed at bringing the stock back at least to levels that can produce the maximum sustainable yield, and guided by scientific assessment and subjected to a periodic evaluation of progress? (GA resolution 77/118, para. 23)
- 5) **Global climate change and ocean acidification.** Are efforts being intensified to assess and address, as appropriate, the impacts of global climate change and ocean acidification on the sustainability of fish stocks and the habitats that support them, in particular the most affected ones? (GA resolution 77/118, para. 11)
- 6) **By-catch management and discards.** Are the following applied in activities to manage by-catch and reduce discards, and reducing the incidental catch of seabirds in longline fisheries: FAO International Guidelines on Bycatch Management and Reduction of Discards<sup>201</sup> and the FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries?<sup>202</sup> (GA resolution 77/118, paras. 160 and 161)
- 7) **Abandoned, lost or otherwise discarded fishing gear, including marine debris.** Have efforts been enhanced to prevent and mitigate the impacts of all kinds of lost, abandoned or otherwise discarded fishing gear (including from so-called ghost fishing and marine debris from plastics and microplastics),<sup>203</sup> including by encouraging application of the FAO Voluntary Guidelines on the Marking of Fishing Gear, establishing mechanisms and incentives for the regular retrieval of derelict gear and adopting mechanisms for monitoring and reducing discards of fishing gear?<sup>204</sup> (GA resolution 77/118, para. 231, and Report of the 2023 Review Conference<sup>205</sup>)
- 8) **Development of area-based management tools.** Have area-based management tools<sup>206</sup> been developed, including criteria on the objectives, establishment and effective management, taking into account, inter alia, relevant provisions of the BBNJ Agreement<sup>207</sup> and tools provided by the secretariat of the Convention on Biological Diversity,<sup>208</sup> and are the FAO Technical Guidelines on Marine Protected Areas and Fisheries<sup>209</sup> applied? (GA resolution 77/118, para. 225)

<sup>201</sup> <https://www.fao.org/3/ba0022t/ba0022t.pdf>.

<sup>202</sup> <https://www.fao.org/3/X3170E/x3170e02.htm>.

<sup>203</sup> Including by application of the FAO Voluntary Guidelines on the Marking of Fishing Gear.

<sup>204</sup> In support of the commitment under the 2030 Agenda for Sustainable Development to, by 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution.

<sup>205</sup> A/CONF.210/2023/6, annex, part A, para. 9(b).

<sup>206</sup> Including closed areas, marine-protected areas and marine reserves.

<sup>207</sup> Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, notably Part III; available at [https://treaties.un.org/doc/Treaties/2023/06/20230620%204-28%20PM/Ch\\_XXI\\_10.pdf](https://treaties.un.org/doc/Treaties/2023/06/20230620%204-28%20PM/Ch_XXI_10.pdf).

<sup>208</sup> Available at <https://www.cbd.int/marine/tools.shtml>.

<sup>209</sup> FAO, *Fisheries Management, 4, Marine Protected Areas and Fisheries*, FAO Technical Guidelines for Responsible Fisheries, No. 4, Suppl. 4 (Rome, FAO, 2011); available at <https://www.fao.org/3/i2090e/i2090e.pdf>.

**9) Protection of biodiversity in the marine environment.** Is marine biodiversity protected, including in vulnerable marine ecosystems, among others through the development of area-based management tools? (A/CONF.210/2023/6, annex, part A, section 6[a])

**10) Prevention or elimination of overfishing and excess fishing capacity.** To ensure the capacity of your State's fishing fleet is commensurate with the sustainability of fish stocks, have target levels and plans or other appropriate mechanisms for ongoing capacity assessment been established, and is any transfer of fishing capacity to other fisheries sustainable? (A/RES/77/118, para. 124)

Are subsidies prohibited for illegal, unregulated and unreported fishing, fishing of overfished stocks and unregulated high seas fishing? (2022 World Trade Organization [WTO] Agreement on Fisheries Subsidies)

Are notifications provided as required under article 8 of the Agreement on Fisheries Subsidies, including pursuant to article 25 of the Agreement on Subsidies and Countervailing Measures (SCM) and other specified information? (2022 World Trade Organization [WTO] Agreement on Fisheries Subsidies)

**11) Interests of artisanal and subsistence fishers.** Is a participatory approach taken for the management of small-scale fisheries, and are the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication<sup>210</sup> applied? (A/CONF.210/2023/6, para. 130)

**12) Data collection and sharing of information.** Have the minimum required data been identified in order to further increase the number of fully assessed stocks, and are improvements to data collection and sharing of information being made, including in the following areas:

- Stock assessments by improving the collection and sharing of data on catches, including in areas without RFMO/As
- Understanding of the underlying causes of the lack of timely, complete and accurate submission of data and developing means of overcoming these difficulties, inter alia through incentives, disincentives, sanctions and other compliance measures
- Cooperating and developing standards or standardized requirements for the collection and sharing of data on catch and fishing effort and considering new tools for fisheries-independent data collection
- Understanding of emerging technologies and their role in the improvement of collection and sharing of fisheries-related data
- Reporting the catch of associated species to FAO
- Reporting on catch data separated between fish caught within and outside areas of national jurisdiction

(A/CONF.210/2023/6, annex, part A, sect. 10.)

Have obligations in connection with the collection and submission of data and information on fisheries to FAO been fulfilled?

**13) Scientific research and technologies.** Is a wide range of tools and new emerging technologies being used to strengthen compliance? (A/CONF.210/2023/6, annex, part A, sect. 6[d])

<sup>210</sup> Available at <https://www.fao.org/3/i4356en/I4356EN.pdf>.

## Article 6 - Application of the precautionary approach

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

- 1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.*
- 2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.*
- 3. In implementing the precautionary approach, States shall:*
  - (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;*
  - (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;*
  - (c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and*
  - (d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.*
- 4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.*
- 5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.*
- 6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.*



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

## 1. Highlights

The duty to apply, and obligations for implementing, the precautionary approach are described in this article.

The precautionary approach requires States to be more cautious when information is uncertain, unreliable or inadequate. In implementing the approach, States must improve decision-making and information-sharing and develop specified data collection and research programmes, adopt plans, and apply or take into account specified scientifically based factors and measures.<sup>211</sup>

States must apply the precautionary approach widely.<sup>212</sup> They must be more cautious when information is uncertain, unreliable or inadequate; the absence of adequate scientific information must not be used as a reason for postponing or failing to take conservation and management measures.<sup>213</sup>

Certain actions are required in implementing the precautionary approach.<sup>214</sup>

- (a) Improving decision-making by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty
- (b) Applying the guidelines in Annex II and determining stock-specific reference points and the action to take if they are exceeded
- (c) Taking into account uncertainties<sup>215</sup>
- (d) Developing data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopting plans necessary to ensure their conservation and protect habitats of special concern

The guidelines in Annex II outline technical aspects of applying the precautionary approach, including the use of limit and target reference points, which must be stock-specific and are intended to predict

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<sup>211</sup> They are in art. 6(3) and include implementing improved techniques for dealing with risk and uncertainty; applying the guidelines in Annex II and determining stock-specific reference points and actions to take in case they are exceeded; taking into account specified uncertainties and other specified information; developing data collection and research programmes to assess the impact of fishing on non-target and associated dependent species and their environments.

<sup>212</sup> Art. 6(1).

<sup>213</sup> Art. 6(2).

<sup>214</sup> Art. 6(3).

<sup>215</sup> Among others, those relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socioeconomic conditions.



outcomes of management alternatives for reaching the targets and avoiding the limits, and to characterize the uncertainty in both cases.<sup>216</sup>

When adequate information is available, the following precautionary reference points should be used:<sup>217</sup>

- (a) Limit reference points. They set boundaries intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. When the limit reference point is approached or reached, management action should severely curtail or stop fishery development, as appropriate, and corrective action should be taken.
- (b) Management, or target, reference points. They are intended to meet management objectives. When a target reference point is reached during a development process, management action should aim at maintaining the fishery system at its level, for example, through establishment of total allowable catches and quotas or through effort controls.

Control rules<sup>218</sup> may also be considered for management targets. Reference points and the type of management reaction to be implemented are two types of precautionary elements that can be considered in implementing a control rule, as well as management targets.<sup>219</sup> Harvest control rules provide a framework to conduct management evaluation. Managers agree on specific management actions under their control, which are evoked according to levels of stock status relative to predefined reference points. These pre-agreed management actions are then simulated for a range of scenarios.

Rebuilding plans are special forms of target control rules, to be implemented when stocks have fallen below limit biomass levels.

The guidelines in Annex II also elaborate the role of reference points in fisheries management strategies; the need to set provisional reference points in situations where information is poor or absent; and a minimum standard for limit reference points.

States must take measures to ensure that, where reference points are approached, they will not be exceeded. If they are, the guidelines in Annex II must be applied immediately.<sup>220</sup>

Where there is concern about the status of target stocks or non-target or associated or dependent species, States must subject them to enhanced monitoring to review their status and the efficacy of

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<sup>216</sup> The FAO Code of Conduct for Responsible Fisheries provides in art. 7.5.3: States and subregional or regional fisheries management organizations and arrangements should, on the basis of the best scientific evidence available, inter alia, determine:

- a. Stock-specific target reference points, and, at the same time, the action to be taken if they are exceeded
- b. Stock-specific limit reference points, and, at the same time, the action to be taken if they are exceeded; when a limit reference point is approached, measures should be taken to ensure that it will not be exceeded

<sup>217</sup> The guidelines for the application of precautionary reference points in Annex II define a precautionary reference point as “an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.”

<sup>218</sup> A control rule describes a variable over which management has some direct control as a function of some other variable(s) related to the status of the stock. In many discussions of the topic, a control rule describes a reference fishing mortality rate as a function of stock size. Simply put, a control rule seeks to identify measures of “good” and “bad” stock condition (by comparing perceived stock status with biological reference points), as well as the actions that will make the stock condition change from “bad” to “good.”

<sup>219</sup> A technical explanation of the implementation of the precautionary approach by tuna organizations and explanation of control rules is given by Paul de Bruyn, Hilario Murua, and Martín Aranda, “The Precautionary approach to fisheries management: How this is taken into account by tuna regional fisheries management organisations (RFMOs),” *Marine Policy* (2012), IOTC-2012-WPTT14-INF10; available at <https://www.bmis-bycatch.org/references/3ap7q49q> and <https://www.fao.org/3/bi468e/bi468e.pdf>.

<sup>220</sup> Art. 6(4).

conservation and management measures, and revise the measures regularly in light of new information.<sup>221</sup>

Cautious measures, including catch and effort limits, must be adopted for new or exploratory fisheries as soon as possible, and must remain in force until sufficient data are available to assess the impact of the fisheries on long-term sustainability. If appropriate, the measures must allow for the gradual development of the fisheries.<sup>222</sup>

When a natural phenomenon has a significant adverse impact on the status of the stocks, States must adopt temporary emergency measures on any fishing activities that presents a serious threat to the sustainability of the stocks.<sup>223</sup>

In practical terms, implementation of the precautionary approach requires determination of the status of the stock(s) relative to limit and target reference points, predicting outcomes of management alternatives for reaching the targets while avoiding the limits, and characterizing the uncertainty in both cases. The greater the uncertainty of the management advice, the more precaution is needed in management. Specific needs for fishery monitoring and research for stock assessments are identified.

## 2. Implementation guidance and practice

At the international level, FAO first published guidelines on the precautionary approach to capture fisheries in 1996.<sup>224</sup> FAO has since promoted its implementation, together with the ecosystem approach to fisheries, in other guidelines such as those on the management of deep-sea fisheries on the high seas.<sup>225</sup> This reflects the practice of the General Assembly, for example, in its call for States to take action on deep-sea fisheries, consistent with the precautionary approach and ecosystem approaches, to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices (addressed in annex III of this Guide).<sup>226</sup>

A FAO technical paper on the activities and developments of RFMO/As and advisory bodies, 2000–2017, reports that most constitutive instruments that have been amended in the past 20 years have incorporated references to the precautionary approach.<sup>227</sup> Other summaries of the implementation of the precautionary approach by RFMO/As have been published,<sup>228</sup> noting, for example, the agreement by one RFMO to develop and implement a harvest strategy approach for each of the key fisheries and stocks in its Convention Area, and for another, its action to implement the precautionary approach despite not having formally adopted it.

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<sup>221</sup> Art. 6(5).

<sup>222</sup> Art. 6(6).

<sup>223</sup> Art. 6(7).

<sup>224</sup> FAO, “Precautionary approach to capture fisheries and species introductions.” Elaborated by the Technical Consultation on the Precautionary Approach to Capture Fisheries (Including Species Introductions) (Lysekil, Sweden, 6–13 June 1995), FAO Technical Guidelines for Responsible Fisheries, No. 2 (Rome, FAO, 1996); available at <https://www.fao.org/3/V8045E/V8045E00.htm>. The precautionary approach was also set out in arts. 6.5 and 7.5 of the 1995 FAO Code of Conduct for Responsible Fisheries, <https://www.fao.org/3/v9878e/v9878e.pdf>.

<sup>225</sup> FAO, *International Guidelines for the Management of Deep-sea Fisheries in the High Seas* (Rome, FAO, 2009); available at <https://www.fao.org/3/i0816t/i0816t.pdf>.

<sup>226</sup> GA resolution 61/105, para. 80.

<sup>227</sup> Tables 3 and 8 show the RFMOs and advisory bodies that include the precautionary approach in their constitutive instrument. T. Terje Løbach and others, *Regional Fisheries Management Organizations and Advisory Bodies. Activities and Developments, 2000–2017*. FAO Fisheries and Aquaculture Technical Paper, No. 651 (Rome, FAO, 2020); available at <https://www.fao.org/3/ca7843en/CA7843EN.pdf>.

<sup>228</sup> De Bruyn and others, “The Precautionary approach to fisheries management: How this is taken into account by tuna regional fisheries management organisations (RFMOs)” ; Camille Goodman and others, “Enhancing cooperative responses by regional fisheries management organisations to climate-driven redistribution of tropical Pacific tuna stocks,” *Frontiers in Marine Science, Policy and Practice Reviews Article*, vol. 9 (2022); available at <https://www.frontiersin.org/articles/10.3389/fmars.2022.1046018/full>.

## *Examples of RFMO/A practice*

### *General*

Key activities reported by RFMO/As to implement the precautionary approach include the following:

- Determination of precautionary target and limit reference points for specific stocks, as well as provisional reference points
- Development of harvest control rules
- Applying the approach to the management of deep-sea fisheries
- Establishing technical working groups, for example, to review implementation or develop risk-based management strategies
- Assessments of draft long-term management plans
- Determination of precautionary target and limit reference points for specific stocks as well as provisional reference points

### *Specific*

Northwest Atlantic Fisheries Organization (NAFO) has undertaken a revision of the NAFO Precautionary Approach Framework (2004) with an aim to establish reference points for all stocks as appropriate.<sup>229</sup>

The Western and Central Pacific Fisheries Commission (WCPFC) has adopted a conservation and management measure on Establishing a Harvest Strategy for Key Fisheries and Stocks in the Western and Central Pacific Ocean.<sup>230</sup> It refers to article 6 of the Agreement, among others, and provides that the Guidelines in Annex II shall be applied by the WCPFC. Interim target reference points were established for skipjack in 2015<sup>231</sup> and agreed for South Pacific albacore at WCPFC15 in 2019.<sup>232</sup> The measures on tropical tuna<sup>233</sup> and Pacific bluefin tuna<sup>234</sup> are geared towards ensuring that the limit reference points are not exceeded.

## *Examples of State practice*

Key activities reported by States for implementing the precautionary approach are, as follows:

- Adoption of target and limit reference points
- Adoption of harvest control rules and pre-agreed decision rules in the event that reference points are breached
- Stock recovery and rebuilding strategies

The precautionary approach in setting annual fishing opportunities for fish stocks has also been applied when reliable quantitative information was not available by seeking to ensure sustainable

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<sup>229</sup> Scientific Council Summary Documents 2022 are available at <https://www.nafo.int/Library/Science-Council/Scientific-Council-SC-SCSs/2022-scientific-council-summary-scs-documents>, including the document “Achieving NAFO Convention objectives with a Precautionary Approach Framework, Precautionary Approach Working Group (PA-WG) October 2021” at <https://www.nafo.int/Portals/0/PDFs/sc/2022/scs22-02.pdf>. See also the Meeting Proceedings of the Commission (2023) at <https://www.nafo.int/Portals/0/PDFs/mp/2022-2023/MP%202022-2023.pdf>.

<sup>230</sup> CMM 2022-03. Information on this conservation and management measure (CMM) and other developments relating to limit reference points and target reference points is available in the *Summary Report of the Nineteenth Regular Session of the Commission* (2022); available at <https://meetings.wcpfc.int/meetings/wcpfc19>.

<sup>231</sup> CMM 2015-06; available at <https://cmm.wcpfc.int/>.

<sup>232</sup> <https://meetings.wcpfc.int/meetings/sc15>.

<sup>233</sup> CMM 2021-01; available at <https://cmm.wcpfc.int/>.

<sup>234</sup> CMM 2021-02; available at <https://cmm.wcpfc.int/>.

exploitation rates using other available biological and/or qualitative information and incorporating precautionary considerations.

States' actions include the following:

- Contributing to the scientific work of RFMO/As
- Working with other RFMO/A members to ensure that target stocks are maintained at levels that take account of the sustainability of harvested species, and that ecological relationships between harvested and dependent and related species are maintained
- Managing key harvested fish stocks through the adoption of target and limit reference points as well as harvest control rules and pre-agreed decision rules in the event that fish stocks breach predetermined reference points
- Progressively restoring populations of fish stocks above biomass levels capable of producing maximum sustainable yield
- Capacity-building to improve science in the determination of reference points
- Financing necessary research

The Secretary-General's reports to the Review Conference document actions by a number of States to implement the guidelines in annex II of the Agreement for determining precautionary target and limit reference points for specific stocks, as well as provisional reference points, including in the RFMO/As to which they are party.

### 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 6</b></p> <p style="text-align: center;"><b>APPLICATION OF THE PRECAUTIONARY APPROACH</b></p> <p><b>UNFSA</b></p> <p>1) Is the precautionary approach applied widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment? (UNFSA, art. 6[1])</p> <p>2) Is more caution applied when information is uncertain, unreliable or inadequate? (UNFSA, art. 6[2])</p> <p>3) When applying the precautionary approach, have your State's authorities:</p> <ul style="list-style-type: none"><li>• Obtained and shared the best scientific information available and implemented improved techniques for dealing with risk and uncertainty, and considered it for decision-making? (UNFSA, art. 6[3][a])</li><li>• Applied the guidelines set out in Annex II and determined, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded? (UNFSA, art. 6[3][b])</li></ul>
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- Developed data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopted plans that are necessary to ensure the conservation of such species and to protect habitats of special concern? (UNFSA, art. 6[3][d])
- Taken measures to ensure that, when reference points are approached, they will not be exceeded? In the event that they are exceeded, without delay, taken action to restore the stocks? (UNFSA, art. 6[4])
- Subjected target stocks or non-target or associated or dependent species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures, when the status of these stocks is of concern? Revised those measures regularly in the light of new information? (UNFSA, art. 6[5])
- For new or exploratory fisheries, adopted, as soon as possible, cautious conservation and management measures, including, inter alia, catch limits and effort limits? (UNFSA, art. 6[6])

### **Supplementary**

- 1) Have actions been taken, consistent with the precautionary approach and ecosystem approaches, to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices? (GA resolution 61/105, para. 80)
- 2) Have conservation and management measures been adopted to prevent significant adverse impacts from bottom fishing on vulnerable marine ecosystems, consistent with the Guidelines? If not, have such areas been closed to bottom fishing until such conservation and management measures are adopted? (GA resolution 78/68, para. 224)
- 3) For deep-sea fisheries, have the following been established:
  - Precautionary effort limits, particularly where reliable assessments of sustainable exploitation rates of target and main by-catch species are not available
  - Precautionary measures, including precautionary spatial catch limits where appropriate, to prevent serial depletion of low-productivity stocks
  - Regular review of appropriate indices of stock status and revision downwards of the limits listed above when significant declines are detected
  - Measures to prevent significant adverse impacts on vulnerable marine ecosystems
  - comprehensive monitoring of all fishing effort, capture of all species and interactions with VMEs (FAO DSF Guidelines, para. 65)

### **Article 7 - Achievement of compatible measures**

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

1. *Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national*

*jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:*

*(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;*

*(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.*

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

*(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;*

*(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;*

*(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;*

*(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;*

*(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and*

*(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.*

*3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.*

*4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.*

5. *Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.*

6. *Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.*

7. *Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.*

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

## 1. Highlights

The requirement for compatible measures is aimed at ensuring that conservation and management measures adopted within, and those adopted beyond areas under national jurisdiction for the same stocks, are not undermined by differences in approaches.

The requirements for cooperating to achieve compatible conservation and management measures within and beyond areas of national jurisdiction are linked to the provisions in the Convention that establish the duty of States to coordinate and cooperate in relation to straddling fish stocks<sup>235</sup> and highly migratory fish stocks.<sup>236</sup> Additionally, in relation to the high seas, States must cooperate with other States in taking measures for their nationals<sup>237</sup> and in the conservation and management of the living resources in the high seas.<sup>238</sup>

Compatible measures are complementary to the ecosystem and precautionary approaches as well as implementation of the other general principles set out in article 5; all are applicable both in areas within national jurisdiction and in areas beyond national jurisdiction. The requirement for compatible measures also enables the effective collection and exchange of data and information.

Cooperation is required, directly or through mechanisms provided in Part III of the Agreement, between relevant coastal States and the States whose nationals fish for the following:<sup>239</sup>

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<sup>235</sup> Art. 63(2).

<sup>236</sup> Art. 64.

<sup>237</sup> Art. 117.

<sup>238</sup> Art. 118.

<sup>239</sup> Art. 7(s1)(a) and (b). It is without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention.

- Straddling fish stocks in order to agree on measures in the adjacent high seas
- Highly migratory fish stocks to ensure conservation and promote optimum utilization throughout the region, within and beyond areas under national jurisdiction

Conservation and management measures established for the high seas and areas under national jurisdiction must be compatible to ensure management of the fish stocks in their entirety. To this end, coastal States and States fishing on the high seas with respect to the same stocks have a duty to cooperate to achieve compatible measures. In determining such measures, they must take into account the following:<sup>240</sup>

- (a) Measures applied by the coastal State, ensuring that high seas measures do not undermine their effectiveness
- (b) Previously agreed measures for the high seas with respect to the same stocks by relevant coastal States and States fishing on the high seas, and by RFMO/As
- (c) Biological unity and other specified characteristics including the extent to which stocks are fished in areas under national jurisdiction
- (d) Respective dependence of the coastal States and the fishing States on the stocks concerned

These states must also ensure that the measures do not result in harmful impact on the living marine resources as a whole.

States must make every effort to agree on compatible measures within a reasonable period of time,<sup>241</sup> but where this does not occur, dispute settlement procedures provided in Part VIII of the Agreement may be invoked by States.<sup>242</sup>

Pending agreement on compatible measures, States must make every effort to enter into provisional arrangements of a practical nature. If States are unable to agree on such arrangements, they may submit the dispute to a court or tribunal in accordance with the procedures in Part VIII.<sup>243</sup> Criteria are given for provisional arrangements or measures.<sup>244</sup>

Coastal States and States fishing on the high seas must regularly inform other interested States of their respective measures directly or through appropriate RFMO/As or other appropriate means.<sup>245</sup>

## 2. Implementation guidance and practice

### *Examples of RFMO/A practice*

#### *General*

In practice, at the regional level several RFMO/As have included these requirements for compatibility in their constitutive instruments, and cooperation between many RFMO/As and coastal States has

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<sup>240</sup> Art. 7(2)(a)–(f).

<sup>241</sup> Art. 7(3).

<sup>242</sup> Art. 7(4).

<sup>243</sup> Art. 7(5).

<sup>244</sup> Art. 7(6). They require provisional arrangements or measures to take into account the provisions of this part, have due regard for the rights and obligations of all States concerned, not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures, and be without prejudice to the final outcome of any dispute settlement procedure.

<sup>245</sup> Art. 7(7) and (8).



consistently been reported.<sup>246</sup> The Secretary-General's report to the Review Conference in 2023 provided the following recent examples:<sup>247</sup>

- The binding scheme of control and enforcement of the North-East Atlantic Fisheries Commission includes arrangements for shared monitoring, control and enforcement measures, joint at-sea patrols and extensive arrangements to regulate transshipment.
- The North Pacific Fisheries Commission, in its conservation and management measures, requested members fishing inside national jurisdiction to take measures compatible with those of the Commission.
- The Southern Indian Ocean Fisheries Agreement was developing a common framework for scientific observation on board vessels to increase cooperation between flag States and was also working on practical solutions to operationalize information-sharing, including through strengthening the cooperation and coordination between overlapping and adjacent RFMO/As.
- The Western and Central Pacific Fisheries Commission had measures in place to manage exclusive economic zones and high seas areas in its Convention Area in a complementary manner, including for bigeye, skipjack and yellowfin tuna stocks.

### ***Specific***

Examples of relevant requirements in RFMO/A conventions include the following:

- The Convention on Cooperation in the Northwest Atlantic Fisheries requires the Commission and the appropriate coastal State to promote the coordination of their respective measures and actions.<sup>248</sup>
- The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean elaborates requirements for the compatibility of conservation and management measures established for the high seas and those adopted for areas under national jurisdiction.<sup>249</sup>

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<sup>246</sup> A/CONF.210/2016/1, para. 63. For example, as reported in the Secretary-General's report to the 2016 Review Conference, complementary measures had been taken by Canada and NAFO for the protection of vulnerable marine ecosystems; Chile consented for the South Pacific Regional Fisheries Management Organisation (SPRFMO) to establish a total allowable catch for jack mackerel throughout the resource's range, including in areas under its jurisdiction; SEAFO considered the Namibian assessment for orange roughy in setting the total allowable catch; and in considering conservation and management measures, WCPFC took into account measures agreed upon and implemented in Pacific island countries. NEAFC indicated that it achieved compatibility either by basing measures on agreements reached by relevant coastal States or by adopting measures applicable both to exclusive economic zones and the high seas.

<sup>247</sup> A/CONF.210/2023/1, para. 85.

<sup>248</sup> Convention on Cooperation in the Northwest Atlantic Fisheries, art. VI - the Commission, para. 11. "11. (a) In exercising its functions pursuant to paragraph 8, the Commission shall seek to ensure consistency between: (i) any measure that applies to a stock or group of stocks found both within the Regulatory Area and within an area under national jurisdiction of a coastal State, or any measure that would have an effect through species interrelationships on a stock or group of stocks found in whole or in part within an area under national jurisdiction of a coastal State; and (ii) any actions taken by a coastal State for the management and conservation of that stock or group of stocks with respect to fishing activities conducted within the area under its national jurisdiction. (b) The Commission and the appropriate coastal State shall accordingly promote the coordination of their respective measures and actions. Each coastal State shall keep the Commission informed of its actions for the purpose of this Article." Convention on Cooperation in the Northwest Atlantic Fisheries; available at <https://www.nafo.int/Portals/0/PDFs/key-publications/NAFOConvention-2017.pdf>.

<sup>249</sup> Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, art. 4, Compatibility of conservation and management measures. Among others, it provides that "Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of straddling fishery resources in their entirety"; available at <https://www.sprfmo.int/assets/Basic-Documents/Convention-and-Final-Act/SPRFMO-Convention-2023-update-12May2023.pdf>.

### *Examples of State practice*

A number of States reported on actions to achieve compatibility of measures, mainly including through RFMO/As in which they were members.<sup>250</sup> Other examples of cooperation include the following:

- Cooperating bilaterally with certain distant-water fishing States to adopt conservation and management measures specific to certain straddling species
- Concluding fishing agreements with distant-water fishing States that includes requirements to ensure the compatibility of measures

### **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 7</b></p> <p style="text-align: center;"><b>COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES</b></p> <p><b>UNFSA</b></p> <p>1) Have compatible conservation and management measures been achieved for relevant straddling fish stocks and highly migratory fish stocks under your State's jurisdiction or fished by nationals of your State in the high seas areas? (UNFSA, art. 7[1])</p> <p>2) If so, in determining the measures, have the following criteria been taken into account:</p> <ul style="list-style-type: none"><li>• Measures applied by the coastal State, ensuring that high seas measures do not undermine their effectiveness</li><li>• Previously agreed measures for the high seas in respect of the same stocks by relevant coastal States and States fishing on the high seas, and by RFMO/As</li><li>• The Biological unity and other specified characteristics including the extent to which stocks are fished in areas under national jurisdiction</li><li>• The respective dependence of the coastal States and the fishing States on the stocks concerned</li></ul> <p style="padding-left: 40px;">Additionally, is there assurance that the measures do not result in harmful impact on the living marine resources as a whole? (UNFSA, art. 7[2])</p> <p>3) Have all efforts been made to agree on compatible measures within a reasonable period of time, and if agreement is not reached, have procedures for the settlement of disputes under Part VIII of the Agreement been invoked? (UNFSA, art. 7[3] and [4])</p> <p>4) Pending agreement on compatible measures, have all efforts been made to enter into provisional arrangements of a practical nature, and if so have all applicable criteria been taken into account? (UNFSA, art. 7[5] and [6])</p> <p>5) Have other interested States been informed of your State's conservation and management measures in relation to the relevant straddling stocks and highly migratory fish stocks?</p>
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<sup>250</sup> A/CONF.210/2023/1, para. 80.

## **Supplementary**

- 1) Seek practical options for the following:
  - Operationalizing the sharing of information;
  - Facilitating capacity-building in monitoring, control and surveillance and data collection
  - Improving decision-making processes in RFMO/As where required, with a view to promoting the compatibility of measures put in place for the conservation and management of straddling fish stocks and highly migratory fish stocks(A/CONF.210/2023/6, annex, part A, para. 5[b])
- 2) Improve the exchange of data and information to support the development of compatible measures, including through the establishment and operation of data and information exchange mechanisms between RFMO/As.  
(A/CONF.210/2023/6, annex, part A, para. 5[c])

## PART III MECHANISMS FOR INTERNATIONAL COOPERATION

### Overview and background

The Convention requires States to cooperate, either directly or through appropriate international, regional or subregional organizations for the management of straddling fish stocks and highly migratory fish stocks.<sup>251</sup>

Part III elaborates the duty to cooperate through direct cooperation or participation in the establishment of mechanisms for cooperation in accordance with specified criteria. The mechanisms include subregional or regional fisheries management organizations or arrangements, and the Agreement calls for agreement on participatory rights and sets out factors to take into account when determining such rights for new members or participants. It addresses transparency, strengthening existing mechanisms, and provision of information and cooperation in scientific research.

Provisions are included for the application of the Agreement to enclosed and semi-enclosed seas and areas of high seas surrounded entirely by an area under the national jurisdiction of a single State. The structure of the Part is reflected in the table below.

PART III	
Article 8	Cooperation for conservation and management
Article 9	Subregional and regional fisheries management organizations and arrangements
Article 10	Functions of subregional and regional fisheries management organizations and arrangements
Article 11	New members or participants
Article 12	Transparency in activities of subregional and regional fisheries management organizations and arrangements
Article 13	Strengthening of existing organizations and arrangements
Article 14	Collection and provision of information and cooperation in scientific research
Article 15	Enclosed and semi-enclosed seas
Article 16	Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

Part III of the Agreement provides mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks. It is based on requirements in the Convention<sup>252</sup> for coastal States and States whose nationals fish for the following:

- Straddling fish stocks in the adjacent high seas area to agree upon measures necessary for conservation in the adjacent high seas
- Highly migratory fish stocks in the region to ensure and promote optimum utilization throughout the region, within and beyond areas under national jurisdiction

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<sup>251</sup> Arts. 63(2) and 64 of the Convention.

<sup>252</sup> Art. 63(2) on Straddling fish stocks and art. 64 on Highly migratory fish stocks. Requirements in those articles were imported into the Agreement in art. 7(1), paras. (a) and (b) of the Agreement on Compatibility of Conservation and Management Measures.

This Part also addresses some problems with inadequate implementation of the Convention at the regional level identified in 1992, including lack of institutional standards, lack of coordination among regional bodies, and inadequate harmonization of measures.<sup>253</sup>

Part III of the Agreement requires States to cooperate, directly and through relevant RFMO/As, in the conservation and management of straddling fish stocks and highly migratory fish stocks. When the cooperation occurs through RFMO/As, in general, broad latitude is given to States to determine the mechanisms for international cooperation, and whether they are established as organizations or arrangements.<sup>254</sup> However, the mechanism must meet the functions in article 10. States party to the Agreement that fish for relevant fish stocks on the high seas are encouraged to join such organizations or arrangements or alternatively must apply relevant conservation and management measures.

The Agreement calls for the establishment of new RFMO/As, where none exist, and provides minimum standards for their role and functions. It also requires States Parties to take measures to strengthen the performance of existing RFMO/As, including to bring pre-existing RFMO/As in line with the provisions of the Agreement. Prior to adoption of the Agreement in 1995, seven relevant RFMO/As had been established.<sup>255</sup> Since then, an additional six relevant RFMO/As have been established.<sup>256</sup>

While there are continued calls for the establishment for new RFMO/As to address gaps in areas where fisheries take place but remain unregulated,<sup>257</sup> in most areas, States now tend to focus on strengthening existing RFMO/As by reviewing and, if necessary, updating various aspects of their mandates, procedures, participation and activities, including expanding coverage and measures.

Performance reviews have emerged as a key tool for reviewing and strengthening the performance of RFMO/As including towards the full and effective implementation of the provisions of the Agreement. They also increase the transparency of managed fisheries. Since the Review Conference first recommended RFMO/As undertake performance reviews, all RFMO/As have undergone at least one performance review, with some now on their third such process.

Otherwise, current priorities include the following topics that focus on RFMO/As, addressed at the 2023 Review Conference: promoting participation, strengthening mandates and measures, performance reviews and best practices guidelines, strengthening cooperation and coordination among RFMO/As, improving decision-making and flag State control.<sup>258</sup>

## **Article 8 - Cooperation for conservation and management**

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<sup>253</sup> Lodge and Nandan, "Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995."

<sup>254</sup> Art. 1(1)(d) of the Agreement defines "arrangements" as a cooperative mechanism established in accordance with the Convention and the Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

<sup>255</sup> They were, together with the year in which they entered into force: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) 1982; Commission for the Conservation of Southern Bluefin Tuna (CCSBT) 1994; General Fisheries Commission for the Mediterranean (GFCM) 1952; Inter-American Tropical Tuna Commission (IATTC) 1949; International Commission for the Conservation of Atlantic Tunas (ICCAT) 1969; Northwest Atlantic Fisheries Organization (NAFO) 1979; North-East Atlantic Fisheries Commission (NEAFC) 1959.

<sup>256</sup> They were, together with the year in which they entered into force: Indian Ocean Tuna Commission (IOTC) 1996; North Pacific Fisheries Commission (NPFC) 2015; South East Atlantic Fisheries Organisation (SEAFO) 2003; Southern Indian Ocean Fisheries Agreement (SIOFA) 2012; South Pacific Regional Fisheries Management Organisation (SPRFMO) 2012; Western and Central Pacific Fisheries Commission (WCPFC) 2004.

<sup>257</sup> 2023 Review Conference advance unedited reporting material, para. 93 and annex, para. 18, [https://www.un.org/depts/los/convention\\_agreements/RRC23/2023RRC\\_AdvanceUnedited.pdf](https://www.un.org/depts/los/convention_agreements/RRC23/2023RRC_AdvanceUnedited.pdf).

<sup>258</sup> A/CONF.210/2023/6, annex, part B.

## *Article 8 - Cooperation for conservation and management*

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

## 1. Highlights

Requirements relating to establishment of and participation in RFMO/As are addressed in article 8 and are summarized below.

Cooperation between coastal States and States fishing on the high seas is required, directly or through RFMO/As, to ensure effective conservation and management of the fish stocks.<sup>259</sup>

States must enter into consultations in good faith and without delay to establish relevant measures and meanwhile have regard to the rights, interests and duties of other States. Pending agreement on the arrangements, States must observe the provisions of the Agreement and act in good faith and with due regard to the rights, interests and duties of other States.<sup>260</sup>

States must become members of an RFMO/A that has competence to establish relevant measures or agree to apply the measures. States having a “real interest”<sup>261</sup> in the fisheries concerned may become members, and the RFMO/A must not preclude their membership or participation or discriminate against them.<sup>262</sup>

Access to the resources is only available for members/participants in RFMO/As or those that agree to apply its measures.<sup>263</sup> Where no RFMO/A exists, States must cooperate to establish one and participate in its work.<sup>264</sup>

Before submitting a proposal to an RFMO/A for taking action in relation to the relevant living resources, States should consult with other members/participants through the RFMO/A, where the proposal would have a significant effect on measures already established by it.<sup>265</sup>

In recent years, States have cooperated to establish a new RFMO;<sup>266</sup> consider the possibility of transforming two existing regional fisheries advisory bodies into RFMOs;<sup>267</sup> and conclude an

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<sup>259</sup> Art. 8(1).

<sup>260</sup> Art. 8(2).

<sup>261</sup> There is no definition of the term “real interest,” which has been the subject of controversy. Various perspectives have been argued, including: States that have been fishing in the relevant area and want to continue to do so, have a real interest; the concept of “real interest” applies to high seas areas and does not include fisheries in the EEZ of coastal States, given that any fishing activity within an EEZ is under licence to the coastal State and therefore is the “interest” of the coastal State; as noted in art. 11(1)(f) of the Agreement concerning the participatory rights of new members, attention should be placed on, inter alia, “the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur”; States with a “real interest” are already likely to include coastal States whose waters are within the RFMO’s Convention Area so the term “real interest” is redundant, and possibly adds to the ambiguity. Bianca Haas, Kamal Azmi, and Quentin Hanich, “The unintended consequences of exemptions in conservation and management measures for fisheries management,” *Ocean & Coastal Management*, vol. 237 (15 April 2023) available at <https://www.sciencedirect.com/science/article/pii/S0964569123000698?via%3Dihub>. However, taken together arts. 8, 10 and 11 make it clear that members/participants of RFMO/As must be prepared to accommodate new entrants. The question then becomes the conditions under which new members/participants are to be brought into the RFMO/A, and various considerations that must be taken into account are listed in art. 11, including the following:

- The status of the relevant stocks and the existing level of fishing effort in the fisheries
- The needs of coastal fishing communities dependent mainly on fishing for the stocks
- The needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources (arts. 11[a], [b], [c], [d], [f])

See also E.J. Molenaar, “The concept of ‘real interest’ and other aspects of co-operation through regional fisheries management mechanisms,” *International Journal of Marine and Coastal Law*, No. 15 (1 January 2000), pp. 475–531; available at [https://brill.com/view/journals/estu/15/4/article-p475\\_2.xml?language=en](https://brill.com/view/journals/estu/15/4/article-p475_2.xml?language=en).

<sup>262</sup> Art. 8(3).

<sup>263</sup> Art. 8(4).

<sup>264</sup> Art. 8(5).

<sup>265</sup> Art. 8(6).

<sup>266</sup> The FAO initiative to establish the Red Sea and Gulf of Aden Aquaculture and Fisheries Organization (RAAFO).

<sup>267</sup> The Fishery Committee for the Eastern Central Atlantic (CECAF) and the Western and Central Atlantic Fishery Commission (WECAFC).

agreement to prevent unregulated fishing in a high seas portion of the central Arctic Ocean.<sup>268</sup> As noted above, there is currently a significant focus on promoting participation in existing RFMO/As, and improving their performance.

## **2. Implementation guidance and practice**

Several FAO international fisheries instruments emphasize the duty of States to cooperate with a view to ensuring effective conservation and management of the stocks, including through RFMO/As, as in the following cases:

- The FAO Port State Measures Agreement requires parties to cooperate, including through RFMO/As, in the effective implementation of that Agreement.<sup>269</sup>
- The voluntary FAO Code of Conduct encourages States to cooperate, inter alia, through RFMO/As, to promote conservation and management, ensure responsible fishing, and ensure effective conservation and protection of living aquatic resources throughout their range of distribution.<sup>270</sup>
- The voluntary FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO IPOA-IUU) encourages cooperation through RFMO/As to prevent, deter and eliminate IUU fishing.<sup>271</sup>
- The FAO Voluntary Guidelines for Transshipment provide guidance to States, RFMO/As, regional economic integration organizations and other intergovernmental organizations when developing new transshipment regulations, revising existing regulations, and integrating these within the broader regulatory framework, with a view to addressing IUU fishing and promoting sustainable fisheries.<sup>272</sup>

The General Assembly has urged States fishing for straddling fish stocks and highly migratory fish stocks on the high seas and relevant coastal States to become members of relevant RFMO/As or apply the agreed conservation and management measures.<sup>273</sup>

Some means of promoting participation in RFMO/As considered by the 2023 Review Conference have included developing mechanisms through which to invite States to join RFMO/As and providing incentives to encourage non-members to join; strengthening efforts to agree on participatory rights and allocation criteria, with due regard to the aspirations of small island developing States and the status of the stocks; and ensuring that all States exhibiting a real interest are able to become members, provided that they have demonstrated their interest and capacity to comply with relevant measures, including the effective exercise of flag State control.<sup>274</sup>

At the international level, FAO has participated directly in the negotiations to establish a number of RFMO/As, formalizing opportunities for sharing experiences within a given region, and/or

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<sup>268</sup> 2021 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean which is in force and implements the Convention and the Agreement. It is available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC199323/>.

<sup>269</sup> Art. 6(3).

<sup>270</sup> Art. 6.12.

<sup>271</sup> Para. 28.

<sup>272</sup> <https://www.fao.org/3/cc5602t/cc5602t.pdf>.

<sup>273</sup> A/RES/77/118, para. 163.

<sup>274</sup> A/CONF.210/2023/6, annex, part B, para. 4.



implementing the processes needed for the sustainable management of shared resources.<sup>275</sup> It has supported processes for the possible transformation of some fisheries bodies into RFMO/As.<sup>276</sup>

### *Examples of RFMO/A practice*

#### *General*

RFMO/A practice towards promoting participation has included the following:

- Addition of new parties
- Accepting the participation of States as cooperating non-contracting parties
- Accepting the participation of States as observers
- Adoption of a mechanism to consider applications for the granting of cooperating non-member (CNM) status subject to participatory rights
- Development of more detailed guidance on allocations to further incentivize the participation of members and non-members
- Agreement to invite non-members and coastal States in particular, that fish within the area of competence to become members
- Enhancing engagement with non-cooperating non-members through outreach activities, in particular by encouraging participation in RFMO/A meetings as observers<sup>277</sup>

#### *Specific*

- A Decision taken in 2013 by the South Pacific Regional Fisheries Management Organization grants temporary cooperating non-contracting party status to signatory States and States that participated in the work of the Preparatory Conference, which had not yet undertaken or completed their domestic procedures for ratification, acceptance, accession or approval, and wish to cooperate with the Commission.<sup>278</sup>
- A Recommendation adopted by the International Commission for the Conservation of Atlantic Tuna requires the Executive Secretary to contact annually all non-contracting parties, entities, or fishing entities known to be fishing in the Convention Area for species under the competence of the Commission to urge them to become a contracting party or to attain the status of a cooperating non-contracting party, entity or fishing entity.<sup>279</sup>
- The Western and Central Pacific Fisheries Commission has adopted a conservation and management measure that expresses the Commission's commitment to transitioning to a more equitable allocation framework for high seas fishing opportunities for purse seine vessels and fishing opportunities for longline vessels.<sup>280</sup>

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<sup>275</sup> T. Terje Løbach and others, *Regional Fisheries Management Organizations and Advisory Bodies*.

<sup>276</sup> A/CONF.210/2023/1, para. 150. The bodies are the Fishery Committee for the Eastern Central Atlantic (CECAF) and the Western Central Atlantic Fishery Commission (WECAFC).

<sup>277</sup> A/CONF.210/2023/1, para. 183.

<sup>278</sup> Decision 3-2013 Commission Decision on the granting of temporary cooperating non-contracting party status; available at <https://www.sprfmo.int/assets/Basic-Documents/88caad93c5/Decision-3-2013-Granting-of-temporary-Cooperating-Non-Contracting-Party-status.pdf>.

<sup>279</sup> Recommendation 03-20 by ICCAT on Criteria for attaining the status of cooperating non-contracting party, entity or fishing entity in ICCAT; available at <https://www.iccat.int/Documents/Recs/compendiopdf-e/2003-20-e.pdf>.

<sup>280</sup> Conservation and Management Measure 2023-01 for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean, para. 27: "The Commission commits to transitioning to a more equitable allocation framework for high seas fishing opportunities that takes into account Articles 8, 10 (3) and 30 of the Convention. The Commission will commence a process to develop that framework in 2026, to enable the Commission to reach agreement in 2026 on hard effort or catch limits in the high seas of the Convention Area and a framework for the allocation of those limits in the high seas amongst all Members and Participating Territories that adequately take into account Articles 8, 10 (3) and 30 of the Convention"; available at <https://cmm.wcpfc.int/>. Art. 10(3) of the Convention sets out factors that the

### *Examples of State practice*

State practice to promote participation in RFMO/As involves the following in their capacity as members or cooperating non-members:

- Active participation in RFMO/As as members or cooperating non-members
- As members, supporting participation, as appropriate, by non-members
- Provide funding support to promote the participation of developing States
- Application of interim measures prior to entry into force<sup>281</sup>

The Secretary-General's report to the Review Conference in 2023 noted that few concrete steps appear to have been taken by RFMO/As to modify their constitutive instruments and rules to facilitate such additional participation. Moreover, efforts to render allocation frameworks more equitable, which would serve as an incentive for additional States to join or participate in RFMO/As, could be enhanced.<sup>282</sup>

### **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 8</b></p> <p style="text-align: center;"><b>COOPERATION FOR CONSERVATION AND MANAGEMENT</b></p> <p><b>UNFSA</b></p> <p>1) Is there a framework for international cooperation in relation to straddling fish stocks and highly migratory fish stocks for which your state participates in the exploitation? (UNFSA art. 8[1])</p> <p>2) Is consideration and support given to the establishment of new RFMO/As relevant to your State as a coastal State or a flag State, and if so, is consideration and support given to implement the requirements concerning consultations, membership, participation and access to resources? (UNFSA art. 8[2], [3] and [4])</p> <p>3) Is action taken, through relevant RFMO/As, to consider and, as appropriate, modify the constitutive instrument and rules where needed to facilitate participation as members, cooperating non-members or observers, and ensure that all States exhibiting a real interest</p>
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Commission must take into account in developing criteria for allocation of the total allowable catch or the total level of fishing effort; available at <https://www.wcpfc.int/doc/convention-conservation-and-management-highly-migratory-fish-stocks-western-and-central-pacific>.

<sup>281</sup> A/CONF.210/2023/1, para. 192 gives examples of interim measures taken by States. One State reported that it had agreed to the implementation of measures and the exchange of fisheries information when setting up the aforementioned proposed fisheries and aquaculture authority in the Red Sea. Another State indicated that it had recently signed a Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean together with four other States. It also noted that with the recent entry into force of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean, an initial 16-year moratorium on fishing in the treaty area had been activated and that within two and three years, respectively, the parties were required to establish a joint scientific research and monitoring programme as well as conservation and management measures for exploratory fishing. A group of States noted that it had complied with interim measures of regional fisheries management organizations and arrangements of which it was a member and that the corresponding processes constituted positive examples of voluntary interim measures and preparatory conferences leading to adoption of an agreement.

<sup>282</sup> A/CONF.210/2023/1, para. 204.

are able to become members on condition that they have demonstrated their interest and capacity to comply with measures adopted by the RFMO/A? (UNFSA art. [3])

#### **Supplementary**

- 1) Where RFMO/As relevant to your State already exist, has consideration been given as appropriate to expand their geographical and/or species coverage to close any gaps? (A/CONF.210/2023/6, annex, part A, para. 18[a])
- 2) Where the establishment of RFMO/As relevant to your State is being considered, is there agreement on interim measures based on the best scientific information available and on the precautionary approach until such organizations or arrangements are established? (A/CONF.210/2023/6, annex, part A, para. 18[a])
- 4) Is action taken, through relevant RFMO/As, to achieve the following:
  - (a) Develop a mechanism and criteria to invite States with a real interest to become members? (A/CONF.210/2023/6, annex, part B, para. 4[a])
  - (b) Develop incentives where needed to encourage non-members to join the RFMO/A? (A/CONF.210/2023/6, annex, part B, para. 4[a])
  - (c) Strengthen efforts to agree on participatory rights and allocation criteria for members, new members and cooperating non-members, giving due regard to the aspirations of developing States and the status of the stocks? (A/CONF.210/2023/6, annex, part B, para. 4[a])

#### **Article 9 - Subregional and regional fisheries management organizations and arrangements**

##### *Article 9 - Subregional and regional fisheries management organizations and arrangements*

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

*(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;*

*(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;*

*(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and*

*(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.*

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

## 1. Highlights

In establishing a new RFMO/A, States must agree on certain matters and inform other States of the work of the proposed organization or arrangement. Such matters would normally be reflected in the constitutive instruments of an organization. Article 9 may thus provide a minimum content for such agreements in order to ensure the effectiveness of the resulting organization or arrangement.

In establishing an RFMO/A, States must agree on the following:<sup>283</sup>

- Stocks to which the measures apply<sup>284</sup>
- Area of application<sup>285</sup>
- Relationship between the work of the new RFMO/A and the role, objectives and operations of any relevant existing RFMO/A
- Mechanism for obtaining scientific advice and reviewing the status of the stocks, including, where appropriate, the establishment of a scientific advisory body

States are also required to inform other States that they are aware have a real interest in the work of the proposed organization or arrangement of their cooperation.<sup>286</sup> It is recalled that pursuant to article 8, States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement.

## 2. Implementation guidance and practice

State practice in establishing RFMO/As is consistent with this article, as reflected in the existing constitutive instruments.

## 3. Implementation checklist

**IMPLEMENTATION CHECKLIST**

**ARTICLE 9**

**SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS**

**UNFSA**

In establishing an RFMO/A:

(a) Has agreement been reached as required on the stocks, the area of application, the relationship between the work of the new RFMO/A and relevant existing RFMO/A, and a

<sup>283</sup> Art. 9(1)(a)–(d).

<sup>284</sup> Taking into account the characteristics of the stocks and the nature of the fisheries involved.

<sup>285</sup> Taking into account art. 7, para. 1, and the characteristics of the subregion or region, including socioeconomic, geographical and environmental factors.

<sup>286</sup> Art. 9(2).

mechanism for obtaining scientific advice and reviewing the status of the stocks? (UNFSA, art. 9[1])

- (b) Have other States with a real interest in the work of the proposed RFMO/A been informed? (UNFSA, art. 9[2])

### **Supplementary**

Are all States exhibiting a real interest able to become members of a relevant RFMO/A, on the condition that they have demonstrated their interest and capacity to comply with the measures adopted by the concerned RFMO/A, including their willingness to effectively exercise flag State control, while recognizing the need to enhance the capacity of developing States in this regard? (A/CONF.210/2023/6, annex, part B, para. 4[c])

## **Article 10 - Functions of subregional and regional fisheries management organizations and arrangements**

### *Article 10 - Functions of subregional and regional fisheries management organizations and arrangements*

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

- (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;*
- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;*
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;*
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;*
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;*
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;*
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;*
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;*

*(i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;*

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

*(k) promote the peaceful settlement of disputes in accordance with Part VIII;*

*(l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and*

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

## **1. Highlights**

In fulfilling their obligation to cooperate through RFMO/As, States must agree on certain matters and take certain actions that relate to or constitute functions of RFMO/As.

The Agreement provides certain functions that States must discharge in fulfilling their obligation to cooperate through RFMO/As. They are summarized below and may be applied to existing RFMO/As and the establishment of new RFMO/As, as well as to their subsequent strengthening, as provided in article 13. They may be implemented in various forms, such as the constitutive instrument, mechanisms, measures and procedures of the RFMO/A.

The functions include matters on which States must variously agree, adopt, take action, promote and otherwise act, as described below.

Agree on the following:

- And comply with conservation and management measures to ensure long-term sustainability of the fish stocks<sup>287</sup>
- As appropriate, participatory rights such as allocations of allowable catch or levels of fishing effort<sup>288</sup>
- Standards for collection, reporting, verification and exchange of data on fisheries for the stocks<sup>289</sup>
- Means by which the fishing interests of new members or participants will be accommodated<sup>290</sup>
- Decision-making procedures that facilitate the adoption of conservation and management measures in a timely and effective manner<sup>291</sup>

Adopt and apply generally recommended international standards for the responsible conduct of fishing operations;<sup>292</sup>

Take actions concerning scientific matters to achieve the following:

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<sup>287</sup> Art. 10(a).

<sup>288</sup> Art. 10(b).

<sup>289</sup> Art. 10(e).

<sup>290</sup> Art. 10(i).

<sup>291</sup> Art. 10(j).

<sup>292</sup> Art. 10(c).

- Obtain and evaluate scientific advice, review the status of the stocks, and assess the impact of fishing on non-target and associated or dependent species<sup>293</sup>
- Compile and disseminate accurate and complete statistical data, as described in annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate<sup>294</sup>
- Promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof<sup>295</sup>

Promote the peaceful settlement of disputes in accordance with part VIII.<sup>296</sup>

Ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement.<sup>297</sup>

Give due publicity to the conservation and management measures established by the organization or arrangement.<sup>298</sup>

The actions to be taken by RFMO/As concerning scientific matters, noted above, are closely related to provisions in articles 5, 6 and 7, respectively, on general principles, application of the precautionary approach, and the compatibility of conservation and management measures. They may be considered together, as appropriate, in implementing the Agreement.

## 2. Implementation guidance and practice

FAO provides considerable support, resources and programmes in science-related matters important for the discharge of RFMO/A functions, including stock assessments and data<sup>299</sup> as well as comprehensive information on the conservation and management of sharks in relation to the 1999 IPOA.<sup>300</sup> FAO supports partnerships and work important to both tuna and deep-sea fisheries through the Food and Agriculture Organization of the United Nations-Global Environment Facility (FAO-GEF) Common Oceans initiative, and by extension supports the RFMO/As involved to discharge relevant functions.<sup>301</sup>

More generally, scientific considerations inform other functions of RFMO/As, and in this regard it has been recognized in the Informal Consultations of States Parties to the Agreement that an effective science-policy interface is vital to the implementation of the Convention and the Agreement.<sup>302</sup> The Consultations focused on strengthening this interface, as summarized in the Chairperson's key points.<sup>303</sup>

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<sup>293</sup> Art. 10(d).

<sup>294</sup> Art. 10(f).

<sup>295</sup> Art. 10(g).

<sup>296</sup> Art. 10(k).

<sup>297</sup> Art. 10(l).

<sup>298</sup> Art. 10(m).

<sup>299</sup> For example, resources for fisheries statistics and information are at <https://www.fao.org/fishery/en/information>.

<sup>300</sup> Including background, national and regional plans of action, database of shark measures and tools; available at <https://www.fao.org/ipoa-sharks/tools/ipoa-sharks-documents/en/>.

<sup>301</sup> In recent years, the Global Environment Facility (GEF) has supported sustainability and biodiversity in areas beyond national jurisdiction, and in this regard the FAO-GEF Common Oceans initiative supports partnerships and work described; available at <https://www.fao.org/in-action/commonoceans/projects/tuna-biodiversity/en/>.

<sup>302</sup> This was a key point relating to the strengthening of the science-policy interface raised during the thirteenth round of Informal Consultations of States Parties to the Agreement, July 2018. ICSP13/UNFSA/ INF.2, annex; available at <https://www.un.org/oceancapacity/unfesa>.

<sup>303</sup> Ibid.

The General Assembly has urged further efforts by RFMO/As, as a matter of priority, to strengthen and modernize their mandates and the measures and to implement modern approaches to fisheries management.<sup>304</sup>

The General Assembly has also urged States to strengthen and enhance cooperation among existing and developing RFMO/As in which they participate, including increased communication and further coordination of measures, such as through the holding of joint consultations, and to strengthen integration, coordination and cooperation by such RFMO/As with other relevant fisheries organizations, regional seas arrangements and other relevant international organizations.<sup>305</sup> The outcomes of the 2023 Review Conference also elaborated ways in which the cooperation could be strengthened and enhanced.<sup>306</sup>

Although the Agreement requires States to fulfil their obligations to cooperate through RFMO/As to discharge specified functions and actions, it does not include any dedicated oversight mechanism to review the implementation. However, as described below, the Review Conference plays a role in reviewing implementation in general, and performance reviews of RFMO/As provide a more detailed review of implementation at the regional level.

- Concerning *oversight*, the Review Conference plays an important role for promoting cooperation among RFMOs in implementing the Agreement, as well as reviewing the extent to which the Agreement is being fully and effectively implemented by States, directly or through RFMO/As. The FAO Regional Fishery Body Secretariat's Network (RSN) also provides a platform for enhancing cooperation among RFMO/As.
- Although not addressed in the Agreement, the individual *performance reviews* conducted by RFMO/As for purposes of self-evaluation are encouraged by the General Assembly<sup>307</sup> and Review Conference, which also called for the development of best practices guidelines.<sup>308</sup>
- The Agreement does not address *interim measures* as such<sup>309</sup> for new RFMO/As being developed but that have not yet entered into force. At the time of writing, initiatives were being developed for regions in which coverage gaps previously existed,<sup>310</sup> and the Review Conference recommended the implementation of interim measures adopted by participants involved in negotiations: participants should provide the interim bodies with complete and accurate fisheries data and undertake a periodic review of the measures.<sup>311</sup>

### *Examples of RFMO/A practice*

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<sup>304</sup> A/RES/77/118, para. 175.

<sup>305</sup> A/RES/77/118, para. 177.

<sup>306</sup> A/CONF.210/2023/6, annex, part B, para. 3. Some specific cooperative actions included the establishment of joint working groups or other mechanisms to facilitate the development of harmonized or consistent measures across RFMO/As, in particular with regard to data collection and data-sharing, mitigating and managing the by-catch of non-target and associated and dependent species; implementing an ecosystem approach and promoting effective and consistent implementation of monitoring, control and surveillance tools; sharing positive and negative lists of vessels; and establishing measures related to crew, inspector and observer working conditions within their fisheries, in accordance with applicable international instruments.

<sup>307</sup> A/RES/77/118, paras. 183–88.

<sup>308</sup> A/CONF.210/2023/6, annex, part B, para. 2.

<sup>309</sup> The Agreement refers to provisional arrangements or measures in the context of art. 7 on compatibility of measures and provisional measures in the context of art. 31 on dispute settlement, but does not address interim measures for new RFMO/As. Such measures are in line with the obligation under the Agreement for States to cooperate in the conservation and management of stocks even in the absence of a competent regional organization.

<sup>310</sup> They were an initiative by FAO to establish the Red Sea and Gulf of Aden Aquaculture and Fisheries Organization (RAAFO) and the 2021 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.

<sup>311</sup> A/CONF.210/2023/1, paras. 191–94.



RFMO/As are actively cooperating in scientific matters; for example, the five tuna RFMOs, as a result of the KOBE coordination process, have established joint working groups for specific subjects.<sup>312</sup>

All fisheries-related data in the General Fisheries Commission for the Mediterranean (GFCM) area are collected and transmitted through the Data Collection Reference Framework (DCRF). A DCRF manual<sup>313</sup> guides the user through the correct processes for collecting fisheries data and submitting them in a standardized way to the GFCM through the DCRF online platform.<sup>314</sup>

Amendments to the NAFO Convention have streamlined NAFO's decision-making process and instituted a formal dispute settlement mechanism, among others.<sup>315</sup>

### 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 10</b></p> <p style="text-align: center;"><b>FUNCTIONS OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS</b></p> <p><b>UNFSA</b></p> <p>1) Does any RFMO/A through which your State is cooperating fully provide for the exercise of the functions in article 10, including by achieving the following:</p> <p style="padding-left: 40px;">(a) Agreeing on, inter alia, measures, as appropriate; participatory rights; data standards; and how fishing interests of new members/participants will be accommodated and decision-making procedures (UNFSA, art. 10 [a], [b], [e], [i] and [j])</p> <p style="padding-left: 40px;">(b) Adopting and applying generally recommended international standards for the responsible conduct of fishing operations (UNFSA, art. 10[c])</p> <p style="padding-left: 40px;">(c) Taking actions concerning scientific matters (UNFSA, art. 10[d], [f] and [g])</p> <p style="padding-left: 40px;">(d) Promoting the peaceful settlement of disputes in accordance with part VIII of the Agreement? (UNFSA, art. 10[k])</p> <p>2) Does your State ensure the full cooperation of its relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement? (UNFSA, art. 10[l])</p> <p>3) Does your State give due publicity to the conservation and management measures established by the RFMO/A? (UNFSA, art. 10[m])</p>
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<sup>312</sup> Available at <https://www.tuna-org.org/>.

<sup>313</sup> Available at <https://www.fao.org/gfcm/data/dcrf>.

<sup>314</sup> Available at <https://www.fao.org/gfcm/data/dcrf/platform/en/>.

<sup>315</sup> See art. XIII, Decision making of the Commission, art. XV, Settlement of disputes; available at <https://www.nafo.int/Portals/0/PDFs/key-publications/NAFOConvention-2017.pdf>. The amendments were adopted in 2007 and entered into force in 2017. More information is available at [https://www.nafo.int/Portals/0/PDFs/press/05\\_18\\_pressrelease\\_final.pdf](https://www.nafo.int/Portals/0/PDFs/press/05_18_pressrelease_final.pdf).

## Supplementary

- 1) Does any RFMO/A through which your State is cooperating, cooperate with other RFMO/As and relevant organizations in the discharge of its functions? (A/RES/77/118, paras. 175 and 177)

## Article 11 - New members or participants

### *Article 11 - New members or participants*

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

*(a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;*

*(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;*

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

*(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;*

*(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and*

*(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.*

### 1. Highlights

Criteria are provided for determining the nature and extent of participatory rights for new members of, or participants in, an RFMO/A.

In determining the nature and extent of participatory rights for new members of or participants in an RFMO/A, States must take the following into account:

- (a) The status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery
- (b) The respective interests, fishing patterns and fishing practices of new and existing members or participants

- (c) The respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data, and to the conduct of scientific research on the stocks
- (d) The needs of coastal fishing communities that are dependent mainly on fishing for the stocks
- (e) The needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources
- (f) The interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur

These criteria are associated with the provision that States having a real interest in the fisheries concerned may become members of or participants in the RFMO/A. The terms of participation must not preclude such States from membership or participation. They must not be applied in a discriminatory manner against States or a group of States having a real interest in the fisheries concerned.<sup>316</sup>

## 2. Implementation guidance and practice

The General Assembly has urged RFMO/As to address participatory rights. This could be done through, inter alia, the development of transparent criteria for allocating fishing opportunities that reflect, where appropriate, the relevant provisions of the Agreement, taking due account, inter alia, of the status of the relevant stocks and the respective interests in the fishery.<sup>317</sup>

The 2023 Review Conference indicated that States should strengthen efforts to agree on participatory rights and allocation criteria for new members as well as existing members and cooperating non-members.<sup>318</sup>

### *Examples of RFMO/A practice*

#### *Specific*

The rules of procedure of the Southern Indian Ocean Fisheries Agreement<sup>319</sup> require the Executive Secretary to invite annually all non-contracting parties who undertake fishing activities in the Agreement Area to cooperate with the Meeting of the Parties by acceding to the Agreement or, as the case requires, by applying to the Meeting of the Parties for the status of a cooperating non-contracting party.<sup>320</sup>

A Western and Central Pacific Fisheries Commission conservation and management measure on cooperating non-members (CNMs)<sup>321</sup> provides that non-members with an interest in the fishery, or whose vessels fish or intend to fish in the Convention Area may request the Commission for the status of CNM. Applications are considered annually by the Technical and Compliance Committee. The Commission considers the participatory rights that it will grant to CNMs. CNM status is granted

<sup>316</sup> Art. 8(3) of the Agreement.

<sup>317</sup> A/RES/77/118, para. 182.

<sup>318</sup> A/CONF.210/2023/6, annex B, para. 4(b).

<sup>319</sup> Rule 17, Cooperating non-contracting parties; available at <https://siofa.org/sites/default/files/documents/SIOFA%20Rules%20of%20Procedure%20%282023%29.pdf>.

<sup>320</sup> India joined SIOFA as a cooperating non-contracting party in 2022.

<sup>321</sup> CMM 2019-01; available at <https://cmm.wcpfc.int/>.

for one year. Some CNMs have requested membership, and decisions on whether to invite a State to accede to the Convention must be taken by consensus.<sup>322</sup>

### 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 11</b></p> <p style="text-align: center;"><b>NEW MEMBERS OR PARTICIPANTS</b></p> <p><b>UNFSA</b></p> <ol style="list-style-type: none"><li>1) Does any RFMO/A through which your State is cooperating fully take into account the criteria in article 11(a)–(f) in determining the nature and extent of participatory rights for new members or participants? (UNFSA, art. 11[a]–[f])</li><li>2) Does any RFMO/A through which your State is cooperating have any mechanisms or processes in place to achieve the following:<ol style="list-style-type: none"><li>(a) Develop and take into account the criteria in article 11 or additional transparent criteria</li><li>(b) Regularly review the allocation criteria and relevant participatory rights</li></ol></li></ol> <p><b>Supplementary</b></p> <ol style="list-style-type: none"><li>1) Does any RFMO/A through which your State is cooperating take into account, in addition to the criteria in article 11, the status of the relevant stocks and the respective interests in the fishery in determining the nature and extent of participatory rights for new members or participants? (A/RES/77/118, para. 182)</li><li>2) Is any RFMO/A through which your State is cooperating strengthening, where appropriate, efforts to agree on participatory rights and allocation criteria for members, new members and cooperating non-members? (A/CONF.210/2023/6, annex B, para. 4[b])</li><li>3) Is any RFMO/A through which your State is cooperating addressing participatory rights through, inter alia, the development of transparent criteria for allocating fishing opportunities, taking due account of the status of the relevant stocks and the interests of all those with a real interest in the fishery? (A/CONF.210/2023/6, annex B, para. 5[a])</li></ol>
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### Article 12 - Transparency in activities of subregional and regional fisheries management organizations and arrangements

<p style="text-align: center;"><i>Article 12 - Transparency in activities of subregional and regional fisheries management organizations and arrangements</i></p>
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<sup>322</sup> Art. 35 of the Convention; available at <https://www.wcpfc.int/convention-text>.

1. *States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.*
2. *Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.*

## 1. Highlights

Transparency requirements in this article relate to the decision-making process and other activities, participation by observers and others in meetings, and access to records and reports.

This article requires the following:

- States to provide for transparency in the decision-making process and other activities of RFMO/As<sup>323</sup>
- RFMO/As to afford opportunities for participation to representatives from other intergovernmental organizations and from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks to take part in meetings of RFMO/As as observers or otherwise in accordance with its procedures, which must not be unduly restrictive<sup>324</sup>
- Timely access to be given to intergovernmental and non-governmental organizations to the records and reports of RFMO/As, subject to the procedural rules on access to them<sup>325</sup>

Transparency in the RFMO/A decision-making process and other activities, including through participation by observers and others, is also addressed below in relation to article 13 of the Agreement with a focus on the general strengthening of these requirements in accordance with the provisions of article 13 and on relevant practice by RFMO/As and States.

RFMO/A decision-making processes and activities are applied to a range of matters<sup>326</sup> and are fundamental for the effective execution by RFMO/As of their roles as provided in international instruments.<sup>327</sup> The processes and activities are not confined to a simple voting/consensus formula for taking decisions, and elements that enhance transparency could involve, inter alia:

- Subsidiary bodies: clear, timely procedures for making recommendations/giving advice

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<sup>323</sup> Art. 12(1).

<sup>324</sup> Art. 12(2).

<sup>325</sup> Art. 12(2).

<sup>326</sup> For example, membership, finance and administration; adoption of conservation and management measures; work programmes and priorities; establishment of working groups; committees or other subsidiary bodies, research priorities, liaison with other bodies; implementation of international instruments; attendance by observers at meetings; and, if mandated, dispute settlement. J. Swan, *Decision-Making in Regional Fishery Bodies or Arrangements: The Evolving Role of RFBs and International Agreement on Decision-Making Processes*. FAO Fisheries Circular. No. 995 (Rome, FAO, 2004); available at <https://www.fao.org/3/y5357e/y5357e.pdf>.

<sup>327</sup> Ibid., appendix 1. Provisions relating to RFMO/As in the following instruments are elaborated: The FAO Compliance Agreement, the FAO Code of Conduct, the Agreement and the FAO IPOA-IUU.

- Principal bodies: clear, timely procedures for taking decisions
- Entry into force in an appropriate time period
- An objection procedure that is consistent with the criteria of timeliness and effectiveness<sup>328</sup>

## 2. Implementation guidance and practice

The General Assembly has urged RFMO/As to improve transparency and to ensure that their decision-making processes are fair and transparent and facilitate the adoption of conservation and management measures in a timely and effective manner.<sup>329</sup>

The BBNJ Agreement also has several provisions requiring transparency<sup>330</sup> and establishes a Clearing-House Mechanism<sup>331</sup> that could be relevant for sharing information on measures related to high seas fisheries in some respects.

The Clearing-House Mechanism will serve as a centralized platform to enable parties to the BBNJ Agreement to access, provide and disseminate information with respect to activities taking place pursuant to that Agreement, including information relating to, inter alia, the establishment and implementation of area-based management tools, including marine protected areas, and environmental impact assessments.<sup>332</sup>

It will also foster enhanced transparency, including by facilitating the sharing of environmental baseline data and information relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction between parties and other relevant stakeholders.<sup>333</sup>

### *Examples of RFMO/A practice*

#### *General*

Several RFMO/As reported on their decision-making procedures at the 2023 Review Conference, and some had updated their rules of procedure concerning transparency. In general, recent practice of RFMO/As concerning transparency in their activities includes the following:

- Including certain levels of transparency in decision-making
- Extending the participation of observers to subsidiary bodies and shortening deadlines for relevant applications
- Permitting accredited observers to attend meetings
- Generally opening meetings to the public, including technical meetings
- Publicly making available or disseminating information about activities, decisions and meetings, including reports of meetings and performance reviews
- Developing allocation criteria through a working group or by negotiations among coastal States
- Requiring a member that lodges an objection to propose alternative measures
- Using voting as a last resort only, and in practice only in relation to a conservation and management measure

<sup>328</sup> Ibid. The elements are elaborated in relation to RFMO/A practices.

<sup>329</sup> A/RES/77/118, para. 182.

<sup>330</sup> Art. 16 on Monitoring and transparency, and art. 48 on Transparency. Art. 48, similar to the Agreement, requires transparency in decision-making processes and other activities carried out under that Agreement.

<sup>331</sup> Art. 51(1).

<sup>332</sup> Art. 51(3)(a).

<sup>333</sup> Art. 51(3)(c).

### *Specific*

The rules of procedure of the North-East Atlantic Fisheries Commission allow observers to attend plenary meetings of the Commission and its Permanent Committee on Management and Science.<sup>334</sup> The rules were amended in 2021 to allow observers that have been admitted to the previous meeting of the Commission to be invited by subsidiary bodies by consensus to participate in all or part of their meetings. In addition, the Rules require a contracting party to state the reasons for its objection to a recommendation and declare its intentions following the objection, including a description of any alternative conservation and management measures it intends to take or has already taken.<sup>335</sup>

The North Pacific Anadromous Fisheries Commission may invite any intergovernmental or other organizations, as appropriate, to participate as observers at selected meetings of the Commission. It may also invite additional persons to participate as guests or observers at such meetings, and invitations may be initiated by any party.<sup>336</sup>

### **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 12</b></p> <p style="text-align: center;"><b>TRANSPARENCY IN ACTIVITIES OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS</b></p> <p><b>UNFSA</b></p> <p>1) Does any RFMO/A through which your State is cooperating have a transparent process for decision-making and other activities, and if not, are actions being taken to address this, for example by undertaking the following:</p> <p style="padding-left: 40px;">(a) Adopting transparent decision-making procedures</p> <p style="padding-left: 40px;">(b) Enhancing transparency in relation to other activities, including those of principal and subsidiary bodies (UNFSA, art. 12[1])</p> <p>2) Has any RFMO/A through which your State is cooperating adopted procedural rules relating to participation by representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks that are not unduly restrictive, as well as procedures for timely access to records and reports?</p> <p>3) Does any RFMO/A through which your State is cooperating afford opportunities for representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks to take</p>
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<sup>334</sup> Rules of procedure of the North-East Atlantic Fisheries Commission, chap. 7; available at [https://www.neafc.org/system/files/Rules-of-Procedure%202021%20version 0.pdf](https://www.neafc.org/system/files/Rules-of-Procedure%202021%20version%200.pdf).

<sup>335</sup> *Ibid.*, chap. 8.

<sup>336</sup> NPAFC Rules of procedure, Rule 5; available at <https://www.npafc.org/rules-of-procedure/>.

part in its meetings and provide timely access to its records and reports, subject to procedural rules on access? (UNFSA, art. 12[2])

## Article 13 - Strengthening of existing organizations and arrangements

### *Article 13 - Strengthening of existing organizations and arrangements*

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

#### 1. Highlights

States must cooperate to strengthen existing RFMO/As in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Although a number of RFMO/As have been established following the adoption of the Agreement, several such organizations already existed in 1995. These organizations therefore had not been developed taking into account the requirements of the Agreement, and in some cases their constitutive instruments, policies or procedures required updating to bring them into line with the Agreement. Article 13 provides a legal basis for the continuous review and strengthening of RFMO/As, including to bring them into line with the Agreement or the recommendations of the Review Conference.

#### 2. Implementation guidance and practice

One of the principal vehicles for strengthening existing RFMO/As has been through the holding of performance reviews and the implementation of the outcomes of such reviews. Additional information on these processes is available in the report of the fourteenth round of Informal Consultations of States Parties to the Agreement focused on “Performance reviews of regional fisheries management organizations and arrangements.”<sup>337</sup>

In reviewing and strengthening the RFMO/As, a range of approaches may be taken in relation to various aspects of their functioning, including addressing the following:

- Mandate and functions
- Decision-making and transparency
- Institutional arrangements and procedures
- Strengthened compliance by members<sup>338</sup>

<sup>337</sup> Available at [www.un.org/depts/los/convention\\_agreements/ICSP14/ReportICSP14.pdf](http://www.un.org/depts/los/convention_agreements/ICSP14/ReportICSP14.pdf). See also Péter D. Szigeti and Gail L. Lugten, “The implementation of performance review reports by regional fishery bodies, 2004–2014. FAO Fisheries and Aquaculture Circular No. 1108 (Rome, FAO, 2015).

<sup>338</sup> This is the subject of ongoing review by RFMO/As. A publication by a non-governmental organization, Pew Trusts, has developed a toolkit of approaches for RFMO/As to review member compliance. R. Day and others, “Approaches to evaluate and strengthen RFMO compliance processes and performance. A toolkit and recommendations” (2022), [https://drive.google.com/file/d/1\\_VgtVcRg6BAXg-VR8ULZfYmkqpc2\\_MQS/view?usp=sharing](https://drive.google.com/file/d/1_VgtVcRg6BAXg-VR8ULZfYmkqpc2_MQS/view?usp=sharing).



- Changes that may have taken place since the establishment of the RFMO/A, for example, the fisheries, species, areas, management approaches, members or participants, technology, scientific processes, information exchange, interregional cooperation and strengthened international standards

The General Assembly has recently emphasized the need for strengthening and modernizing the mandates and the measures of RFMO/As,<sup>339</sup> and their decision-making and transparency.<sup>340</sup> These aspects are elaborated below in relation to article 13.

Performance reviews of RFMO/As and best practice guidelines for conducting them are not provided in the Agreement but are significant mechanisms for strengthening RFMO/As. They are addressed below in relation to article 13.

## **Strengthening RFMO/As – modernization of mandates and measures**

### **1. Implementation guidance and practice**

The Secretary-General's report to the Review Conference in 2023 noted the previous call for the modernization of mandates of RFMO/As where this had not yet occurred and identified the need for strengthening mandates and measures.

Indicative elements of a framework for a review of the constitutive instrument to determine whether strengthening and modernization is needed may be considered, as indicated in table 3 below.

Table 3:

#### **Indicative elements of a framework to review the constitutive instrument of an RFMO/A**

Does the instrument ensure the following:

- (a) The adequacy of its scope and application, including to species, areas, fisheries and participants
- (b) An institutional framework with robust functions, rights and responsibilities
- (c) The provision of modern standards for the development and adoption of measures, the precautionary and ecosystem approaches to fisheries management, participatory rights, data and information, decision-making procedures, and means for accommodating new members or participants
- (d) The provision of scientific assessments and advice as required under the Agreement, and, where appropriate, in cooperation with other RFMO/As and with international organizations
- (e) Cooperative mechanisms for effective monitoring, control surveillance and enforcement

<sup>339</sup> A/RES/77/118, para. 175. In doing so, the resolution urges reliance on the best scientific information available and application of the precautionary approach and incorporating an ecosystem approach to fisheries management and biodiversity considerations, including the conservation and management of ecologically related and dependent species and protection of their habitats, where these aspects are lacking, to ensure that they effectively contribute to the long-term conservation and management and sustainable use of living marine resources.

<sup>340</sup> A/RES/77/118, para. 182.

- (f) Full cooperation at the national level for implementing recommendations and decisions, including through compliance mechanisms
- (g) The promotion of peaceful settlement of disputes

However, addressing the overall functioning and effectiveness of RFMO/As more broadly, even where the constitutive instrument is adequate, evaluation of and decisions on other actions needed to strengthen the effective implementation of the Agreement may be undertaken. This may be achieved through, among others, performance reviews, development of best practices, and establishment of internal review mechanisms including for compliance or other processes.

Actions to strengthen measures would include regular review and updating of conservation and management measures, and adoption of new measures taking into account the best available scientific advice as well as changes in the fisheries, environment, climate and modern best practices.

At the international level, FAO reported that it was committed to bolstering regional cooperation through the Regional Fishery Body Secretariats Network (RSN), which provided a forum for promoting consultation and regional dialogue, including the exchange of lessons learned.<sup>341</sup>

#### *Examples of RFMO/A practice*

At the regional level, RFMO/As practice to strengthen their mandates and measures, including as reported through the RSN,<sup>342</sup> the following:

- Regular review and updating of conservation and management measures and adoption of new measures as needed
- Regularly conducting performance reviews and monitoring implementation of recommendations
- Implementation of rebuilding plans
- Strengthening MCS systems, including remote electronic monitoring and compliance
- Establishment of new technical working groups to advance work on, inter alia, catch documentation systems and electronic monitoring
- Strengthening measures on trans-shipment
- Refining measures on vessel monitoring systems and vessel listing requirements
- Strengthening the ecosystem approach based on learning from implementation, monitoring and review

#### *Examples of State practice*

State practice has included efforts to strengthen mandates and/or measures of the RFMO/As to which they belong, including by the following:

- Expanding the scope of constitutive instruments to include additional species
- Delegating additional powers to RFMO/As
- Modifying institutional decision-making procedures
- Enhancing conservation and/or management measures by adopting modern best practices and practices based on best available science

<sup>341</sup> <https://www.fao.org/policy-support/mechanisms/mechanisms-details/ar/c/448782>. For example, the RSN publication featuring the ecosystem approach records strengthened ecosystem and a wide range of other measures taken by members of the RSN. *RSN Magazine*, No. 21 (December 2022), <https://www.fao.org/3/cc3719en/cc3719en.pdf>.

<sup>342</sup> *RSN Magazine*, No. 21 (December 2022).

- Employing ecosystem-based and science-based approaches
- Introducing precautionary management and decision-making frameworks and otherwise
- For new or amended constitutive instruments, ensuring modern approaches for fisheries management are integrated
- Enhancing the regulation of trans-shipment
- Implementing boarding and inspection measures
- Improving catch statistics and the monitoring of fish stocks
- Promoting the strengthening of compliance mechanisms and reliance upon scientific knowledge and advice, while contributing to the introduction of control measures and the re-enforcement of mandates

## Strengthening RFMO/As – decision-making

### 1. Implementation guidance and practice

Decision-making processes in RFMO/As must be transparent in accordance with Article 12. The General Assembly has urged RFMO/As to ensure that their processes are fair and transparent and facilitate the adoption of conservation and management measures in a fair and effective manner.<sup>343</sup>

Decision-making is not confined to a voting formula and involves consideration of the general process, including clear and timely procedures for subsidiary and principal bodies; entry into force in an appropriate time period; an applicable objection procedure consistent with timeliness and effectiveness; and dispute resolution procedures.<sup>344</sup>

Because political will and related considerations may play an indirect part in the decision-making process, key concerns are to ensure transparency and a participative approach and to foster a culture of compliance.

Requirements for decision-making in the principal body of an RFMO/A, such as a Commission, vary among the bodies and include various rules, including decisions by consensus or voting by majority of those present and voting,<sup>345</sup> secret ballot and roll call, or between sessions by written communication.<sup>346</sup> Some RFMO/As have updated their rules to accommodate decision-making during virtual or hybrid meetings. The time period for entry into force of measures can vary among RFMO/As, typically from 60 days to six months.<sup>347</sup>

Objection, and/or opt-out procedures vary, and not all contribute to timeliness and effectiveness of decision-making. Some of these procedures can significantly delay the entry into force of

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<sup>343</sup> A/RES/77/118, para. 182. This includes considering provisions for effective voting and objection procedures, where appropriate, to rely on the best scientific information available, incorporate the precautionary approach and ecosystem approaches, and address participatory rights, including through, inter alia, the development of transparent criteria for allocating fishing opportunities that reflect, where appropriate, the relevant provisions of the Agreement, taking due account, inter alia, of the status of the relevant stocks and the respective interests in the fishery.

<sup>344</sup> J. Swan, *Decision-Making in Regional Fishery Bodies or Arrangements*; Antonia Leroy and Michel Morin, "Innovation in the decision-making process of the RFMOs," *Marine Policy*, vol. 97 (November 2018), pp. 156–62, <https://www.oecd.org/sd-roundtable/papersandpublications/39374762.pdf>.

<sup>345</sup> One RFMO takes decisions by unanimous vote of members present, which has previously resulted in deadlock.

<sup>346</sup> For example, variations could include requirements for a unanimous decision, a specified majority or simple majority, a stated quorum, decisions by consensus where possible, or decisions taken by consensus on matters of substance. In some RFBs if a certain critical mass of members objected, then the other members were not obligated to give effect to the measures. For majority or qualified majority votes, some RFMO/As allow voting for those present and casting affirmative or negative votes, others refer to members "present and voting." Many require a two-thirds or three-fourths majority when deciding on conservation and management measures. J. Swan, *Decision-Making in Regional Fishery Bodies or Arrangements*.

<sup>347</sup> RFMO/As have variously set the period at 60, 80, 90, 120, 180 days or six months. J. Swan, *Decision-Making in Regional Fishery Bodies or Arrangements*.

conservation and management measures.<sup>348</sup> Furthermore, there are concerns that the ability to opt out of a conservation and management measure post-adoption is invariably counterproductive for the RFMO/A and will result in an increased risk to the fish stock/s the RFMO/A is attempting to manage.

To address this, some RFMO/As have adopted objection procedures that require a proposal for alternative measures, a process for reviewing or verifying the validity of an objection and/or that incorporate a dispute resolution procedure.

Rules providing for attendance at meetings by accredited observers and providing for access to records and reports as required under article 12 contribute to the transparency of the decision-making.

The Review Conference in 2023 suggested the following actions to improve decision-making rules and procedures in RFMO/As:<sup>349</sup>

- (a) Address participatory rights through, inter alia, the development of transparent criteria for allocating fishing opportunities
- (b) Ensure that post-opt-out behaviour is constrained by rules preventing opting-out parties from undermining conservation, by establishing clear processes for dispute resolution and for the adoption of alternative measures with equivalent effect that would be implemented in the interim
- (c) Improve the transparency of regional fisheries management organizations and arrangements
- (d) Provide for the reasonable participation of intergovernmental and non-governmental organizations

#### *Examples of RFMO/A practice*

Several RFMO/As reported on their decision-making procedures at the Review Conference in 2023, and many had updated the relevant rules of procedure. Some indicated that they generally adopted or were in favour of adopting decisions by consensus, although no information was available regarding measures to constrain post-opt-out behaviour. In general, recent practice of RFMO/As includes the following, in addition to the activities reported under article 12 requiring transparency in the activities of RFMO/As:

- Acknowledging a conclusion of a performance review report that the consequences of an unrestricted right of members to object to conservation and management measures, without a process to review or verify the validity of an objection, are to potentially weaken implementation and compliance mechanisms
- Proposing or implementing a dispute resolution procedure as envisaged under the Agreement

#### *Examples of States' views*

The views of various States reported by the Secretary-General to the 2023 Review Conference include the following:

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<sup>348</sup> Because of the contingencies involved in many objection procedures, it is difficult to state with accuracy how long some of them may take, but the range appears to be around 100–150 days, 180–200 days, to eight months or longer. J. Swan, *Decision-Making in Regional Fishery Bodies or Arrangements*.

<sup>349</sup> A/CONF.210/2023/6, annex, part B, para. 5.

- Supporting the improvement of rules of procedure, including for decision-making and increased transparency, in RFMO/As, noting this was important to prevent States from undermining conservation
- Acknowledging the significance of effective decision-making, accountability, and the application of RFMO/A rules, procedures and measures in good faith
- Promoting clear procedures, transparency, a participative approach and the creation of a culture of compliance
- Noting that for one RFMO/A where rules of procedure were modelled on the best practices of other RFMO/As, an upcoming performance review was expected to entail further improvements
- Noting that some RFMO/As applied a set of assignment criteria that took into account, among other things, the needs of developing States
- Noting the modification of rules of procedure to accommodate virtual or hybrid meetings

## Strengthening RFMO/As – performance reviews

### 1. Implementation guidance and practice

As noted above, the Agreement did not provide for performance reviews, but such reviews invariably provide the motivation for RFMO/As to strengthen their procedures in accordance with article 13. This was recognized at the fourteenth round of Informal Consultations of States Parties to the Agreement (2019), where the issue for consideration, as directed by the General Assembly, was performance reviews of RFMO/As.<sup>350</sup>

The Review Conference first called for performance reviews of RFMO/As in 2006.<sup>351</sup> In 2008, FAO noted that some RFMO/As were failing to adopt management measures even where they were based on the best scientific advice available. FAO identified a range of factors that impaired the effectiveness of RFMO/As and attributed the situation partly to the frameworks within which they operate and an apparent lack of will of the members to implement decisions in a timely manner.<sup>352</sup>

The first RFMO/A performance review was undertaken in 2006,<sup>353</sup> and in 2007 the tuna RFMOs met in Kobe, Japan, and agreed on some basic criteria for performance reviews. Other RFMO/As have based their reviews on the same or similar criteria, which generally include the following elements:

- (a) A legal analysis of the constitutive instrument
- (b) Conservation and management (status of living marine resources; quality and provision of scientific advice; data collection and sharing; adoption of conservation and management

<sup>350</sup> The report is in document ICSP14/UNFSA/ INF.3 and available at [https://www.un.org/depts/los/convention\\_agreements/ICSP14/ReportICSP14.pdf](https://www.un.org/depts/los/convention_agreements/ICSP14/ReportICSP14.pdf). In paragraph 60 of resolution 73/125 of 11 December 2018, the General Assembly reiterated its request, in para. 55 of resolution 72/72, that the Secretary-General convene the fourteenth round of Informal Consultations of States Parties to the Agreement to focus on the topic “Performance reviews of regional fisheries management organizations and arrangements.”

<sup>351</sup> In proposing means of strengthening the substance and methods of the implementation of the provisions of the Agreement, the Review Conference recommended a systematic review and assessment of RFMO performance. States were encouraged to urge RFMOs of which they were members to undergo performance reviews on an urgent basis; encourage an element of independent evaluation in such reviews; and ensure that the results are made publicly available. The reviews should use transparent criteria, including best practices of RFMOs. A/CONF.210/2006/15, paras. 85–91, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/422/95/PDF/N0642295.pdf?OpenElement>.

<sup>352</sup> Factors included the use of consensus decision-making; placing national interests ahead of good fisheries governance; an unwillingness of members to fund research in support of management; time-lagged implementation of management decisions; a focus on crisis management rather than everyday fisheries management; and the lack of a real connection between day-to-day fisheries management requirements and an annual meeting based on diplomatic practice. FAO, Fisheries and Aquaculture Department, *State of World Fisheries and Aquaculture (SOFIA)* (Rome, FAO, 2008), p. 71, <https://www.fao.org/fishery/en/publications/52032>.

<sup>353</sup> By the North-East Atlantic Fisheries Commission.

measures, including measures adopted at the coastal State level; compatibility of conservation and management measures; and fishing allocations)

- (c) Compliance and enforcement (flag State duties; monitoring, control and surveillance activities; port State measures; follow-up on infringements; cooperative mechanisms to detect and deter non-compliance; market-related measures)
- (d) Decision-making and dispute settlement
- (e) International cooperation (transparency, relationship to cooperating non-members, relationship to non-cooperating non-members, cooperation with other RFMOs and special requirements of developing States)
- (f) Financial and administrative issues

The composition and other terms of reference of the performance review panel is decided by each RFMO/A. The process should be transparent and a mechanism for review, implementation and monitoring of the recommendations by the RFMO/A should be included.

The fourteenth round of Informal Consultations of States Parties to the Agreement addressed various aspects of RFMO/A performance reviews<sup>354</sup> and the Review Conference has focused on the need for regular performance reviews with some element of independent evaluation and inclusive of information sought from all stakeholders.

The 2023 Review Conference recommended the development of best practices guidelines based on Kobe-like processes and called for mechanisms for follow-up actions that include transparency, publicity and accountability, and the establishment of mechanisms for follow-up actions in response to performance reviews.<sup>355</sup>

Key FAO publications report on the performance reviews, best practices and related activities and developments from 2000 to 2017.<sup>356</sup>

### *Examples of RFMO/A practice*

#### *General*

In practice, RFMO/As have shown a significant level of recent activity in conducting performance reviews. Between 2016 and 2023, nine RFMO/As had conducted their first, second or third performance review and an additional four had scheduled further reviews.<sup>357</sup>

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<sup>354</sup> Discussions were held on the following, and key points raised are summarized in annex I: Importance and role of performance reviews; Structure and conduct of performance reviews: experiences, best practices, challenges and opportunities; Recommendations of and mechanisms for follow-up to performance reviews: Experiences, best practices, challenges and opportunities; and Further enhancing the effectiveness of performance reviews through the resumed Review Conference on the Agreement and other intergovernmental processes; ICSP14/UNFSA/ INF.3 15, August 2019, [https://www.un.org/Depts/los/convention\\_agreements/ICSP14/ReportICSP14.pdf](https://www.un.org/Depts/los/convention_agreements/ICSP14/ReportICSP14.pdf).

<sup>355</sup> A/CONF.210/2023/6, annex, part B, para. 2. Identification and promotion of best practices guidelines could take into account consideration of the outcomes of the Review Conference, as well as possible practices that emerged from the fourteenth round of Informal Consultations and those reported in FAO publications.

<sup>356</sup> M. Ceo and others, *Performance Reviews by Regional Fishery Bodies: Introduction, Summaries, Synthesis and Best Practices*, vol. I: CCAMLR, CCSBT, ICCAT, IOTC, NAFO, NASCO, NEAFC, FAO Fisheries and Aquaculture Circular No. 1072 (Rome, FAO, 2012), <https://www.fao.org/3/i2637e/i2637e00.pdf>; Péter D. Szigeti and Gail L. Lugten, *The Implementation of Performance Review Reports by Regional Fishery Bodies, 2004–2014*, FAO Fisheries and Aquaculture Circular No. 1108 (Rome, FAO, 2015), <https://www.fao.org/3/i4869e/i4869e.pdf>; T. Løbach and others, *Regional Fisheries Management Organizations and Advisory Bodies*. The latter publication (Løbach and others) noted that 15 of the 22 organizations and arrangements had undertaken at least one performance review and that by 2017, seven of them had undergone a second such review.

<sup>357</sup> The Secretary-General's report to the 2023 Review Conference notes that since 2016 two RFMO/As report having conducted their first performance reviews, six their second, and one its third. Future performance reviews were scheduled: one RFMO/A will conduct its first, two their second, and one its third. A/CONF.210/2023/1 para. 166.

### *Specific*

- The second performance review of the General Fisheries Commission for the Mediterranean was carried out in 2019. GFCM adopted a resolution on the follow-up, which encouraged GFCM and the contracting parties to put in place the actions provided in an annex.<sup>358</sup>
- Two International Commission for the Conservation of Atlantic Tunas (ICCAT) performance reviews have taken place. After the first review, the GFCM considered an approach to a second performance review<sup>359</sup> and established a working group preparing the next performance review.<sup>360</sup> A working group, established to consider the recommendations of the second review and monitor the progress on their implementation, delivered a comprehensive report on the follow-up.<sup>361</sup>

### *Examples of State practice*

State practice has included support for the following:

- Participation in performance review processes in RFMO/As
- Effective implementation of outstanding performance review recommendations
- Making publicly available the results of reviews and corresponding follow-up actions
- Monitoring the implementation of performance review recommendations at annual RFMO/A meetings as a best practice

### **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 13</b></p> <p style="text-align: center;"><b>STRENGTHENING OF EXISTING ORGANIZATIONS AND ARRANGEMENTS</b></p> <p><b>UNFSA</b></p> <p>1) Does any RFMO/A through which your State is cooperating have a process for strengthening its effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks, including by strengthening its mandate and measures to implement the Agreement and ensuring they encompass provisions for the use of modern approaches to fisheries conservation and management and responsible conduct of fishing operations as reflected in the Agreement? (UNFSA, art. 13)</p> <p><b>Supplementary</b></p> <p>1) Does any RFMO/A through which your State is cooperating undertake regular performance reviews that include some element of independent evaluation, and has it established</p>
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<sup>358</sup> Resolution GFCM/44/2021/11 on the Follow-up of the Second GFCM Performance Review; available at <https://gfcml.sharepoint.com/CoC/Decisions%20Texts/Forms/AllItems.aspx?id=%2FCoC%2FDecisions%20Texts%2FRES%2DGFCM%5F44%5F2021%5F11%2De%2Epdf&parent=%2FCoC%2FDecisions%20Texts&p=true&ga=1>.

<sup>359</sup> Available at [https://www.iccat.int/intermeetings/Performance\\_rev/ENG/PER\\_FINAL\\_TOR\\_ENG.pdf](https://www.iccat.int/intermeetings/Performance_rev/ENG/PER_FINAL_TOR_ENG.pdf).

<sup>360</sup> Recommendation 14–12; available at [https://www.iccat.int/intermeetings/Performance\\_rev/ENG/PER\\_002\\_ENG.pdf](https://www.iccat.int/intermeetings/Performance_rev/ENG/PER_002_ENG.pdf).

<sup>361</sup> “Report of the meeting of the ad hoc working group on follow up of the Second ICCAT Performance Review (Madrid, 27–28 June 2017); available at [https://www.iccat.int/Documents/Meetings/Docs/2017\\_PERF\\_REP\\_ENG.pdf](https://www.iccat.int/Documents/Meetings/Docs/2017_PERF_REP_ENG.pdf).

mechanisms for follow-up actions in response to the performance review,<sup>362</sup> and if not, are actions being taken to address this? (A/CONF.210/2023/6, annex B, para. 2)

## Article 14 - Collection and provision of information and cooperation in scientific research

### *Article 14 - Collection and provision of information and cooperation in scientific research*

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

*(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;*

*(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and*

*(c) take appropriate measures to verify the accuracy of such data.*

2. *States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:*

*(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and*

*(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.*

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

## 1. Highlights

<sup>362</sup> Examples of follow-up actions include scheduled consideration of recommendations by the RFMO/A for adoption or further review, assessment and finalization as needed; designation of responsibilities for follow-up to the recommendations as needed by identifying experts, working groups, interregional or international cooperation or other, terms of reference and time frame; consultations with stakeholders, others; ensuring transparency, publicity and accountability; and regular review of implementation.



As a general principle in article 5, States must “collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes.”<sup>363</sup>

Annex I, “Standard requirements for the collection and sharing of data,” places strong obligations on flag States and consists of seven articles that provide a basic framework.<sup>364</sup>

Article 14 requires States to do the following:

Ensure that their flag vessels provide information necessary to fulfil their obligations under the Agreement and, in accordance with Annex I:<sup>365</sup>

- Collect and share scientific, technical and statistical data with respect to straddling fish stocks and highly migratory fish stocks
- Ensure that the data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner as required by RFMO/As
- Take appropriate measures to verify the accuracy of the data

Cooperate, directly or through RFMO/As, to do, as follows:<sup>366</sup>

- Agree on the specification and format of data
- Develop and share analytical techniques and stock assessment methodologies to improve measures for the fish stocks

And to cooperate, directly or through RFMO/As, to strengthen scientific research capacity for fisheries and promote relevant research for the benefit of all. To this end, States or competent international organizations conducting research beyond areas under national jurisdiction must actively promote the publication and dissemination of the research results and related information to interested States and to the extent possible facilitate the participation of scientists from those States.<sup>367</sup>

Article 14 is based on provisions in the Convention,<sup>368</sup> is consistent with provisions in other international fisheries instruments,<sup>369</sup> and interconnected with a number of other provisions in the Agreement that provide requirements for data collection.<sup>370</sup>

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<sup>363</sup> Art. 5(j) of the Agreement.

<sup>364</sup> They are General principles; Principles of data collection, compilation and exchange; Basic fishery data; Vessel data and information; Reporting; Data verification; and Data exchange.

<sup>365</sup> Art. 14(1).

<sup>366</sup> Art. 14(2).

<sup>367</sup> Art. 14(3).

<sup>368</sup> The key provision for fisheries management is in art. 61(5), The conservation of living resources: “Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional, or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.” Art. 62(4)(d) and (i) would allow a coastal State as a condition of allowing foreign fishing in its EEZ, to impose conditions regarding the provision of catch data (format, content, frequency, to whom the reports should be made, etc). More generally, part XIII of the Convention on Marine Scientific Research consists of, inter alia: sect. 1 on General provisions, sect. 2 on International cooperation, sect. 3 on the Conduct and promotion of marine scientific research, and sect. 4 on Scientific research installations or equipment in the marine environment.

<sup>369</sup> For example, the 1993 FAO Compliance Agreement and 1995 FAO Code of Conduct for Responsible Fisheries developed in a similar time frame as the Agreement. Complementary data collection and reporting are also addressed in FAO Guidelines, for example on deep-sea fishing and by-catch management and reduction of discards. More recently, the World Trade Agreement on Fisheries Subsidies requires members’ notifications of fisheries subsidies to be accompanied by a range of specific information including the status of the relevant fish stocks, conservation and management measures in place, relevant fleet capacity, vessel information and catch data by species or group of species in the fishery for which the subsidy is provided: art. 8.1(b).

<sup>370</sup> Including arts. 5(j), 6(d) and 18(3)(e). The following articles of the Agreement are complementary: arts. 9 and 10(d), (e) and (f). A full analysis of all aspects is given in W.R. Edeson, “Legal aspects of the collection of fisheries data,” FAO Fisheries Circular. No. 953 (Rome, FAO, 1999); available at <https://www.fao.org/3/x4191e/x4191e.pdf>.

## 2. Implementation guidance and practice

The General Assembly has recognized the importance of data collection and has called upon States and RFMO/As to collect and, where appropriate, report to the FAO required catch and effort data, and fishery-related information, and has encouraged RFMO/As to hold regular reviews of member compliance with data collection and reporting requirements and require any members concerned to rectify any problems identified.<sup>371</sup>

FAO plays a leading global role in the collection, compilation, analysis and diffusion of data and information in fisheries, and its statistics and information are publicly available.<sup>372</sup>

The 2023 Review Conference has called for improvements to data collection and sharing of information,<sup>373</sup> including in areas without RFMO/As in accordance with annex I of the Agreement. It highlighted the needs to, inter alia:

- (a) Address causes of the lack of timely, complete and accurate data and develop means of overcoming the difficulties, such as the use of both incentives and disincentives, including sanctions and other compliance measures.
- (b) Improve cooperation and, to the extent possible, develop standards or standardized requirements for the collection and sharing of data on catch and fishing effort and consider new tools for fisheries-independent data collection.
- (c) Recognize the importance of the provision of financial and technical assistance to strengthen the capacity of developing countries to participate in fisheries and comply with relevant obligations.
- (d) Enhance understanding of emerging technologies and their role in improving the collection and sharing of fisheries-related data.
- (e) Identify the minimum required data in order to further increase the number of fully assessed stocks, in particular for data-poor stocks.

The FAO statistics programme, including the global statistics database assists RFMO/As on a global level.

The Coordinating Working Party on Fisheries Statistics (CWP) coordinates among RFMO/As the adoption of common concepts, data types and formats to facilitate data exchange at the global level. Once such information becomes publicly available, FAO updates its databases and makes the information available through several platforms such as the FIRMS Global Tuna Atlas (GTA),<sup>374</sup> Fisheries and Resources Monitoring System (FIRMS)<sup>375</sup> and Fishing Vessels Finder (FVF) portal.<sup>376</sup>

FAO has collaborated with RFMO/As on the modification of the boundaries of statistical divisions, with the aims of obtaining separate data between catches taken inside and outside the exclusive economic zones of coastal States and building capacity.

The 2023 Review Conference called upon States to fulfil their obligations in connection with the collection and submission of data and information on fisheries to FAO, and consider ways to improve such collection within and beyond areas of national jurisdiction and their dissemination to FAO.<sup>377</sup>

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<sup>371</sup> A/RES/77/118, para. 28, including for straddling fish stocks and highly migratory fish stocks within and beyond areas under national jurisdiction, discrete high seas fish stocks, and by-catch and discards. See also A/RES/76/296, annex, para. 14(a).

<sup>372</sup> Available at <https://www.fao.org/fishery/en/information>.

<sup>373</sup> A/CONF.210/2023/6, annex, para. 10.

<sup>374</sup> <https://www.fao.org/fishery/geoserver/tunaatlas/>.

<sup>375</sup> <http://firms.fao.org/firms/en>.

<sup>376</sup> <http://www.fao.org/fishery/collection/fvf/en>.

<sup>377</sup> A/CONF.210/2023/6, annex, para. 11.

Strengthening capacity for scientific research has not been broadly addressed by the General Assembly or Review Conference as a separate issue in the implementation of article 14, but this may be addressed through the Assistance Fund under part VII of the Agreement, or by RFMO/As and States.

Cooperation in scientific research has not been addressed on a general level, but specific needs are identified in various contexts, for example, calling for increased collaboration in scientific research for climate change and promoting scientific research in support of fisheries management to strengthen implementation of an ecosystem approach.

#### *Examples of RFMO/A practice*

##### *General*

In general, actions or mechanisms to improve the collection and sharing of data taken by States and RFMO/As has included the following:

- Implementation of electronic logbooks
- On-board camera systems to control discards
- Mandatory electronic reporting systems
- Compliance monitoring
- Fines for non-compliance
- Points systems to address consistent offending
- Performance assessments
- Publicity obligations
- Regional coordination
- Development of agreements and arrangements between RFMO/As to share information where there are linkages or overlap in fish species or areas of competence
- Support to attend RFMO/A technical meetings and trainings
- Support for capacity-building and access to technology at the local level

RFMO/As have adopted a range of recommendations, requirements and resolutions relevant to data collection and information-sharing, including on the following:

- Catch data and fishing effort
- Access to data
- Information related to monitoring, control and surveillance
- Data management and dissemination
- Reporting
- Data standards
- Implementation by members of national data-collection programmes

Relevant programmes and measures to improve data collection and information-sharing of some RFMO/As have included the following:

- Provision of catch estimates derived from various sources for consideration in fish stock assessments
- Cooperation between RFMO/As to promote harmonization in fishing vessel reporting
- Improvements to data collection concerning bans on targeting fishing and by-catch through a new electronic reporting system
- Regular discussions on improvements to data collection from different sources; and development and provision of regional and in-country training programmes

### *Specific*

The General Fisheries Commission for the Mediterranean has adopted recommendations on data and information reporting, including on fishing activities and on the progressive implementation of data submission.<sup>378</sup>

The contracting parties to the Southern Indian Ocean Fisheries Agreement have adopted a comprehensive conservation and management measure for the Collection, Reporting, Verification and Exchange of Data relating to fishing activities in the Agreement Area.<sup>379</sup>

### *Examples of RFMO/A and State practice*

Several States and RFMO/As have undertaken efforts to improve cooperation concerning data collection and information-sharing, including the following:

- Promoting the development of agreements and arrangements between regional fisheries management organizations and arrangements to share information where there were linkages or overlaps in fish species or areas of competence
- Sharing data sets by government members in the the Global Ghost Gear Initiative
- Coordinating regional work plans on issues related to data collection, handling, storage and transmission
- Supporting the improvement of data collection, management and reporting for developing countries
- Participation of RFMO/as with FAO and other organizations in efforts towards the standardization of protocols for data exchange and the sharing of information
- Developing internet-based data submission portals to report data provision requirements and other management obligations

## **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 14</b></p> <p style="text-align: center;"><b>COLLECTION AND PROVISION OF INFORMATION AND COOPERATION IN SCIENTIFIC RESEARCH</b></p> <p><b>UNFSA</b></p> <p>1) Are vessels flying the flag of your State required to provide all information necessary to fulfil obligations under the Agreement? (UNFSA, art. 14)</p> <p>2) Does your State, in accordance with Annex I of the Agreement:</p>
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<sup>378</sup> GFCM/41/2017/6 on the submission of data on fishing activities in the GFCM area of application; GFCM/40/2016/2 on the progressive implementation of data submission in line with the GFCM Data Collection Reference Framework; available at <https://gfcmlib.org/sites/KnowledgeManagement/Website%20material%20upload/Forms/AllItems.aspx?id=%2Fsites%2FKnowledgeManagement%2FWebsite%20material%20upload%2FDecisions%2F2024%2FGFCM46%5FCompendium%5F2023%2De%2Fpdf&parent=%2Fsites%2FKnowledgeManagement%2FWebsite%20material%20upload%2FDecisions%2F2024&p=true&ga=1>.

<sup>379</sup> CMM 2022-02; available at <https://siofa.org/management/CMM/02%282023%29>.

- Collect and share scientific, technical and statistical data with respect to straddling fish stocks and highly migratory fish stocks
- Ensure that the data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner as required by RFMO/As
- Take appropriate measures to verify the accuracy of the data? (UNFSA, art. 14[1][a], [b] and [c])

3) Does your State cooperate, directly or through RFMO/As, to achieve the following:

- Agree on the specification and format of data
- Develop and share analytical techniques and stock assessment methodologies to improve measures for the fish stocks (UNFSA, art. 14[2][a] and [b])

4) Does your State cooperate, directly or through RFMO/As, to achieve the following:

- Actively promote the publication and dissemination of the research results and related information to interested States and to the extent possible facilitate the participation of scientists from those States (UNFSA, art. 14[3])

### **Supplementary**

1) Does your State, where appropriate, report required catch and effort data, and fishery-related information to RFMO/As to which it is a member/participant and FAO? (A/RES/77/118, para. 28)

2) Does the data your State collects and compiles include the following:

- Catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort
- Information on non-target and associated or dependent species (UNFSA, annex I, art. 1)

3) Is assistance, including training and financial assistance, provided to developing States for capacity development for the conservation and management of living marine resources, with a focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments? (UNFSA, annex I, art. 1[2])

4) Does your State collect and make available to relevant RFMO/As in sufficient detail to facilitate stock assessment the types of basic fishery data described in annex I, including the following:

- Time series of catch and effort statistics by fishery and fleet
- Total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery
- Discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery
- Effort statistics appropriate to each fishing method
- Fishing location, date and time fished and other statistics on fishing operations as appropriate (UNFSA, annex I, art. 3)

## Article 15 - Enclosed and semi-enclosed seas

### *Article 15 - Enclosed and semi-enclosed seas*

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

#### 1. Highlights

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

States bordering an enclosed or semi-enclosed sea<sup>380</sup> should cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention. To this end, States are required to endeavour, directly or through an appropriate regional organization:<sup>381</sup>

- (a) To coordinate the management, conservation, exploration and exploitation of the living resources of the sea
- (b) To coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment
- (c) To coordinate their scientific research policies and undertake, where appropriate, joint programmes of scientific research in the area
- (d) To invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article

This article addressed concerns in relation to situations where a coastal State bordering a semi-enclosed sea may attempt to unilaterally declare a high seas moratorium for distant water fishing vessels fishing for stocks straddling its waters and the high seas, based on its detrimental effect on resources in the coastal waters.<sup>382</sup>

An example of State practice arose in the mid-1980s when vessels of several nations began to fish a stock of pollack in an area of the Central Bering Sea just outside the US and Russian exclusive economic zones. The fish stock was largely associated with the United States zone and its fisheries. American fishermen increasingly called on the US government to control international fishing in the area, also known as the “Bering Sea Donut Hole.” By 1991, negotiations began among stakeholders

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<sup>380</sup> Part IX of the Convention, “Enclosed or semi-enclosed seas” consists of two articles that define the term and call on States to cooperate. The term “enclosed or semi-enclosed seas” is defined as a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States (art. 122). Examples of semi-enclosed seas include the Bering Sea, Sea of Okhotsk, South China Sea, North Sea, Mediterranean Sea and Coral Sea.

<sup>381</sup> Art. 123 of the Convention.

<sup>382</sup> This was the case for fishing pollock in the “peanut hole” in the Sea of Okhotsk. See Jon K. Goltz, “Comment, the Sea of Okhotsk Peanut Hole: How the United Nations draft Agreement on Straddling Stocks might preserve the pollack fishery, *Pac. Rim L & Pol'y J.*, vol. 4, No. 2 (1995), p. 443; available at <https://digitalcommons.law.uw.edu/wilj/vol4/iss2/6/>.

with an interest in the fishery,<sup>383</sup> and the result was the “Donut Hole Convention,”<sup>384</sup> described as a precautionary approach to stock management.<sup>385</sup>

Implementation of this article is generally not reviewed by the General Assembly or Review Conference.

## 2. Implementation checklist

### IMPLEMENTATION CHECKLIST

#### ARTICLE 15

##### ENCLOSED AND SEMI-ENCLOSED SEAS

Does your State implement the Agreement in an enclosed or semi-enclosed sea, and if so, does it take into account the natural characteristics of that sea and endeavour, directly or through an appropriate regional organization, to implement the provisions of part IX of the Convention?

#### Article 16 - Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

##### *Article 16 - Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State*

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

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional

<sup>383</sup> China, Japan, Poland, the Republic of Korea, Russia, Taiwan (Province of China), and the United States.

<sup>384</sup> Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, done at Washington, D.C., 16 June 1994; available at <https://www.state.gov/donut-hole-agreement>.

<sup>385</sup> A report of events is available at <https://www.unclosdebate.org/evidence/777/bering-sea-donut-hole-convention-resolve-overfishing-disputes-was-based-and-supported>.

*arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.*

## 1. Highlights

Where fishing occurs in areas of high seas surrounded entirely by an area under the national jurisdiction of a single State, the State having jurisdiction over the surrounding area must cooperate with the fishing State(s) to establish conservation and management measures with respect to the straddling fish stocks and highly migratory fish stocks in the high seas.

States, having regard to the natural characteristics of the area, must pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7, and measures taken with respect to the high seas must do, as follows:<sup>386</sup>

- Take into account the rights, duties and interests of the coastal State under the Convention
- Be based on the best scientific evidence available
- Take into account any conservation and management measures adopted and applied with respect to the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction
- Agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures with respect to the high seas

The States must act in good faith<sup>387</sup> and make every effort to agree without delay on conservation and management measures to be applied. If, within a reasonable time they are unable to agree, they must apply provisional arrangements or measures,<sup>388</sup> and pending their establishment must take measures in order that their flag vessels do not engage in fisheries that could undermine the stocks concerned.<sup>389</sup>

Implementation of this article is generally not reviewed by the General Assembly or Review Conference.

## 2. Implementation checklist

IMPLEMENTATION CHECKLIST	
ARTICLE 16	
AREAS OF HIGH SEAS SURROUNDED ENTIRELY BY AN AREA UNDER THE NATIONAL JURISDICTION OF A SINGLE STATE	
UNFSA	

<sup>386</sup> Art. 16(1).

<sup>387</sup> Pursuant to art. 8.

<sup>388</sup> They must apply art. 7, paras. 4, 5 and 6, having regard to para. 1.

<sup>389</sup> Art. 16(2).



Does your State fish on an area of high seas surrounded by waters under the national jurisdiction of a coastal State, or is it a coastal state with waters under national jurisdiction that surrounds the high seas, and if so, have conservation and management measures been agreed for the straddling fish stocks and highly migratory fish stocks in the high seas area, and if not, have provisional arrangements or measures been agreed?

## PART IV NON-MEMBERS AND NON-PARTICIPANTS

### Overview and background

Part IV consists only of article 17, which provides for actions and measures that may be taken in relation to States that are not members of or participants in RFMO/As in relation to fishing activities by their flag vessels for stocks, which are subject to conservation and management measures of RFMO/As.

### PART IV

#### Article 17

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

It addresses a situation where the area of competence of an RFMO/A includes high seas, and the RFMO/A has taken conservation and management measures in relation to straddling fish stocks and highly migratory fish stocks.

Article 8(4) of the Agreement provides for the consequences of failure to join or cooperate with an RFMO: only those States that are members of the relevant RFMO/A, or that agree to apply the conservation and management measures established by the RFMO/A, shall have access to the fisheries resources to which those measures apply.<sup>390</sup>

The provision seeks to address the concern that a vessel owner could reregister (or reflag) their fishing vessels in States that are not members of a competent RFMO/A in order to continue to fish in the area without being constrained by the conservation and management measures adopted by the RFMO/A. This is a problem that lies at the heart of concerns relating to illegal, unreported and unregulated (IUU) fishing.

Part IV confronts this situation, at the same time recognizing the reality that non-parties are not bound by the Agreement.

The Agreement adopts a “carrot-and-stick approach” to deal with this situation, while recognizing the reality that its provisions cannot bind non-parties; the approach takes into account other provisions of the Agreement.<sup>391</sup>

The carrot is to require States that are members of an RFMO to request non-members (and non-parties to the Agreement) to comply with the conservation and management measures adopted by

<sup>390</sup> It is recalled that art. 8(3) of the Agreement requires States whose nationals fish for such stocks to become members of or participate in the RFMO/A or to apply its conservation and management measures, and provides that States with a real interest in the fisheries concerned may become members or participants.

<sup>391</sup> Lodge and Nandan, “Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995.”

the RFMO.<sup>392</sup> Cooperation is to be rewarded with benefits (presumably including catch allocations) commensurate with the commitment to cooperate.

The stick requires States parties to take “measures consistent with the Agreement and international law” to deter non-parties from undermining the effectiveness of conservation and management measures adopted by an RFMO.<sup>393</sup>

The sort of measures that might be invoked under this heading include, inter alia, trade- and market-related measures, such as catch documentation schemes, as well as port State measures and coastal State measures. Direct demands to flag States to remove their vessels from the region might also be used if violation of conservation and management measures can be established.

In addition, the article points out that such States are still subject to the obligation under the Convention, which requires coordination and cooperation, directly or through regional or international organizations, among States whose nationals fish for straddling fish stocks and highly migratory fish stocks.<sup>394</sup>

#### **Article 17 - Non-members of organizations and non-participants in arrangements**

##### *Article 17 - Non-members of organizations and non-participants in arrangements*

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

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<sup>392</sup> Art. 17(3).

<sup>393</sup> Arts. 17(4) and 33(2).

<sup>394</sup> Arts. 63 and 64 of the Convention.

## 1. Highlights

This article addresses actions that promote compliance with conservation and management measures of RFMO/As by flag vessels of non-members and non-participants of these RFMO/As. It provides the following:

Non-members and non-participants that do not otherwise agree to apply the relevant RFMO/A conservation and management measures:

- Are not discharged from the obligation to cooperate, in accordance with the Convention and Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.<sup>395</sup>
- Must not authorize their flag vessels to engage in fishing operations for the fish stocks subject to the conservation and management measures established by the RFMO/A.<sup>396</sup>

Members and participants of an RFMO/A must do, as follows:

- Individually or jointly, request the fishing entities<sup>397</sup> that have fishing vessels in the relevant area to cooperate fully with such RFMO/A in implementing the conservation and management measures it has established;<sup>398</sup> the fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures with respect to the stocks.<sup>399</sup>
- Exchange information with respect to the activities of fishing vessels flying the flags of States that are non-members or non-participants and that are engaged in fishing operations for the relevant stocks.<sup>400</sup>
- Take measures consistent with the Agreement and international law to deter activities of such vessels that undermine the effectiveness of subregional or regional conservation and management measures.<sup>401</sup>

The implementation of participatory rights is discussed above in the context of articles 8, 10, 11 and 13.

The provisions applicable to non-members and non-participants that do not otherwise agree to apply the relevant RFMO/A conservation and management measures reiterate the obligation to cooperate in the conservation and management of the relevant fish stocks<sup>402</sup> and require that they not authorize their vessels to fish for such stocks.<sup>403</sup>

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<sup>395</sup> Art. 17(1).

<sup>396</sup> Art. 17(2).

<sup>397</sup> Referred to in art. 1, para. 3.

<sup>398</sup> With a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area.

<sup>399</sup> Art. 17(3).

<sup>400</sup> Art. 17(4).

<sup>401</sup> Art. 17(4).

<sup>402</sup> Art. 17(1).

<sup>403</sup> Art. 17(2).

These provisions have been reinforced in the FAO IPOA-IUU in the activities described as “unregulated fishing,” which includes fishing activities by non-parties to a relevant RFMO in a manner that is not consistent with or contravenes the conservation and management measures of that organization.<sup>404</sup>

## 2. Implementation guidance and practice

The IPOA-IUU encourages all States to take all possible steps, consistent with international law, to prevent, deter and eliminate the activities of non-cooperating States to a relevant regional fisheries management organization that engages in IUU fishing.<sup>405</sup> Further, flag States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing,<sup>406</sup> and the provisions of the Agreement concerning the obligation of non-members to cooperate are integrated into the IPOA-IUU.<sup>407</sup> Any subsequent legal instrument that relates to IUU fishing would therefore, by reference to the IPOA-IUU, incorporate fishing activities by non-members or non-participants of relevant RFMO/As.

The 2023 Review Conference focused on encouraging non-members to join relevant RFMO/As,<sup>408</sup> and the General Assembly has urged States to take effective measures, at the national, subregional, regional and global levels, to deter the activities, including illegal, unreported and unregulated fishing, of any vessel that undermines conservation and management measures that have been adopted by RFMO/As in accordance with international law.<sup>409</sup>

## 3. Implementation checklist

**IMPLEMENTATION CHECKLIST**

**ARTICLE 17**

**NON-MEMBERS AND NON-PARTICIPANTS**

**UNFSA**

1) Does your State, as a non-member of or non-participant in an RFMO/A do the following:

<sup>404</sup> IPOA-IUU, paras. 3.3 and 3.4:

“3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding para. 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).”

<sup>405</sup> Para. 22.

<sup>406</sup> Para. 34.

<sup>407</sup> Para. 79: “States which are not members of a relevant regional fisheries management organization are not discharged from their obligation to cooperate, in accordance with their international obligations, with that regional fisheries management organization. To that end, States should give effect to their duty to cooperate by agreeing to apply the conservation and management measures established by that regional fisheries management organization, or by adopting measures consistent with those conservation and management measures, and should ensure that vessels entitled to fly their flag do not undermine such measures.”

<sup>408</sup> A/CONF.210/2023/6, annex, part B, para. 4(a).

<sup>409</sup> A/RES/77/118, para. 93.

- (a) Cooperate in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks? (UNFSA, art. 17[1])
  - (b) Deny authorizations to your State's flag vessels to fish for stocks subject to RFMO/A conservation and management measures? (UNFSA, art. 17[2])
- 2) Does your State, as a member of or participant in an RFMO/A:
- (a) Individually or jointly request fishing entities with vessels in the relevant area to cooperate fully with the RFMO/A in implementing relevant measures (UNFSA, art. 17[3])
  - (b) Exchange information with respect to the activities of the fishing vessels of non-members or non-participants in the RFMO/A (UNFSA, art. 17[4])
  - (c) Take measures to deter activities of vessels that undermine the effectiveness of RFMO/A conservation and management measures (UNFSA, art. 17[4])

## PART V DUTIES OF THE FLAG STATE

### Overview and background

Part V of the Agreement consists of one article on the duties of the flag State based on its jurisdiction and control over vessels that carry its nationality.

#### PART V

##### Article 18

##### Duties of the flag State

The Convention addresses the scope and content of the duties of the flag State to exercise jurisdiction and control over vessels flying its flag in Article 94.<sup>410</sup> It was developed mindful of the operation of open registers by States that did not have capacity to ensure that their flag vessels meet internationally agreed standards, and in the absence of agreement on criteria for a “genuine link” that should exist between the flag State and a vessel carrying its nationality.<sup>411</sup>

The primary focus of flag State duties at the time of adoption of the Convention related to merchant vessels, as the practice of fishing vessels reflagging to evade controls was not widespread. However, a decade later the issue was prominent enough that the FAO Council agreed to find a solution to the issue of reflagging of fishing vessels into flags of convenience to avoid compliance with internationally agreed conservation and management measures.<sup>412</sup>

The resulting Compliance Agreement was adopted in 1993. There are many similarities between the Compliance Agreement and the Agreement.

An objective common to both instruments is to elaborate the duties of flag States in relation to vessels that engage in fishing on the high seas. The basic duty, which applies to all flag States, whether or not they are members of or participants in a relevant RFMO/A, is to ensure that the vessels do not undermine the effectiveness of internationally agreed conservation and management measures on the high seas. Flag States are required to take several measures to this end, including in relation to controlling their vessels’ actions by means of fishing licences, authorizations or permits, establishment of regulations and a national record of fishing vessels authorized to fish on the high seas and others.<sup>413</sup>

### Article 18 - Duties of the flag State

<sup>410</sup> Two other articles of the Convention have relevance. Art. 91 on the Nationality of ships requires States to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship. Art. 92 on the status of ships provides that a ship that sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State and may be assimilated to a ship without nationality.

<sup>411</sup> The idea of a “genuine link” had been codified in the 1958 Geneva Convention on the High Seas and is referenced in art. 92 of the Convention. However, State practice in applying the “genuine link” varied considerably. For example, Robin R. Churchill, “The meaning of the ‘genuine link’ requirement in relation to the nationality of ships,” 2000, a study available at <https://orca.cardiff.ac.uk/id/eprint/45062/1/ITF-Oct2000.pdf>.

<sup>412</sup> FAO Council, 102nd session (1992).

<sup>413</sup> The full suite of required measures appears in art. 18 of the Agreement, and art. III of the Compliance Agreement provides similar requirements.

### *Article 18 - Duties of the flag State*

- 1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.*
- 2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.*
- 3. Measures to be taken by a State in respect of vessels flying its flag shall include:*
  - (a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;*
  - (b) establishment of regulations:*
    - (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;*
    - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;*
    - (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and*
    - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;*
  - (c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;*
  - (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;*
  - (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;*
  - (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;*

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

*(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;*

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

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

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

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

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

## **1. Highlights**

Requirements relating to the duties of the flag State are summarized below. They include implementing agreed obligations, standards, procedures and systems at subregional, regional and global levels.

Flag States must take measures to ensure their flag vessels that fish on the high seas comply with subregional and regional conservation and management measures and do not engage in any activity that undermines the effectiveness of such measures.<sup>414</sup>

Flag States must only authorize the use of their flag vessels for fishing on the high seas where they are able to effectively exercise their responsibilities with respect to those vessels under the Convention and Agreement.<sup>415</sup>

The measures to be taken by flag States with respect to their flag vessels are described and must include certain elements:<sup>416</sup>

(a) Control on the high seas through licences, authorizations or permits

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<sup>414</sup> Art. 18(1).

<sup>415</sup> Art. 18(2). Art. 94 of the Convention, Duties of the Flag State, requires every State to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.”

<sup>416</sup> Art. 18(3).



- (b) Establishment of regulations that specify requirements relating to licences, authorizations or permits<sup>417</sup>
- (c) Establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information in the record
- (d) Marking of fishing vessels and fishing gear
- (e) Recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data
- (f) Verifying the catch of target and non-target species through certain means
- (g) Monitoring, control and surveillance of such vessels, their fishing operations, and related activities by certain means<sup>418</sup>
- (h) Regulation of trans-shipment on the high seas
- (i) Ensuring compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species

Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States must ensure that the measures they impose on flag vessels are compatible with that system.<sup>419</sup>

In an advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) requested by the Sub-Regional Fisheries Commission,<sup>420</sup> the Tribunal held that the flag State is under the “due diligence obligation” to take all necessary measures to ensure compliance and to prevent IUU fishing by fishing vessels flying its flag.<sup>421</sup> In addressing the question of what constituted the “due diligence obligation” of the flag State in that case,<sup>422</sup> the Tribunal referred to elements similar to those required of flag States in the Agreement, including flag State obligations to do the following:

- Take the necessary measures to ensure that vessels flying its flag comply with the protection and preservation measures adopted by the member States of the Sub-Regional Fisheries Commission.<sup>423</sup>
- Exercise effectively its jurisdiction and control in administrative matters over fishing vessels flying its flag, by ensuring, in particular, that such vessels are properly marked.<sup>424</sup>
- Include in their laws and regulations enforcement mechanisms to monitor and secure compliance with these laws and regulations, and sanctions applicable to involvement in IUU

<sup>417</sup> In relation to licences, permits or authorizations, they relate to the application of terms and conditions, prohibition of high seas fishing except in accordance with the terms and conditions, and require vessels fishing on the high seas to carry them on board at all times and produce them for inspection. Flag States must also ensure that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States.

<sup>418</sup> They are inspection schemes and schemes for cooperation in enforcement pursuant to arts. 21 and 22, observer programmes, and vessel monitoring systems.

<sup>419</sup> Art. 18(4).

<sup>420</sup> Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion of 2 April 2015, Case No. 21; available at [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.21/advisory\\_opinion\\_published/2015\\_21-advop-E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf).

<sup>421</sup> *Ibid.*, para. 129. The Tribunal was addressing the first question in part V of the Opinion: “What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zones of third party States?” (para. 85). It further noted that “It follows from art. 58, para. 3, and art. 62, para. 4, as well as from art. 192, of the Convention that flag States are obliged to take the necessary measures to ensure that their nationals and vessels flying their flag are not engaged in IUU fishing activities” (para. 124).

<sup>422</sup> *Ibid.* The meaning of “due diligence obligation,” elaborated by reference to judicial precedent, was described in paras. 131 and 132. *Inter alia*: “It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party.”

<sup>423</sup> *Ibid.*, para. 136, pursuant to arts. 192 and 193 of the Convention.

<sup>424</sup> *Ibid.*, para. 137, pursuant to art. 94, paras. 1 and 2 of the Convention.

fishing activities must be sufficient to deter violations and to deprive offenders of the benefits accruing from such activities.<sup>425</sup>

- Investigate in accordance with the following requirements of the Convention: “[A] State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State” and “upon receiving such a report, the flag State shall investigate the matter.”<sup>426</sup>

The 2015 FAO Voluntary Guidelines for Flag State Performance<sup>427</sup> provide a tool for strengthening compliance by flag States with their international obligations regarding the flagging and control of fishing vessels. The Guidelines include actions flag States should take in the exercise of flag State responsibility and provide criteria<sup>428</sup> and procedures<sup>429</sup> for carrying out voluntary performance assessments that flag States may decide to undertake as self-assessments or external assessments.

## 2. Implementation guidance and practice

The Review Conference in 2023 recommended that States parties promote the implementation of the FAO Voluntary Guidelines for Flag State Performance as a valuable tool for strengthening compliance by flag States with their duties and obligations, and urge all flag States to implement the Guidelines as soon as possible, including, as a first step, by carrying out a voluntary assessment.

Other FAO guidelines and publications that support requirements of article 18 include those listed below.

Article 18	Requirement	Publication/Guideline
(3)(d)	Marking of fishing vessels	The Marking and Identification of Fishing Vessels: Best Practices <sup>430</sup> The FAO Standard Specifications for the Marking and Identification of Fishing Vessels Use and Options for Review <sup>431</sup>
(3)(d)	Marking of fishing gear	FAO Voluntary Guidelines on the Marking of Fishing Gear <sup>432</sup>
(3)(f)	Verifying the catch of non-target species	FAO Guidelines on by-catch and discards <sup>433</sup>

<sup>425</sup> Ibid., para. 138.

<sup>426</sup> Ibid., para. 139, pursuant to art. 94, para. 6, of the Convention.

<sup>427</sup> Available at <https://www.fao.org/documents/card/en/c/8cb30770-3145-55ed-a0db-315cbbb722a6>.

<sup>428</sup> Paras. 6–38.

<sup>429</sup> Paras. 44–46.

<sup>430</sup> Available at <https://www.fao.org/3/I9156EN/I9156en.pdf>.

<sup>431</sup> S. Davies, A. Hjort, and M. Markides, *The FAO Standard Specifications for the Marking and Identification of Fishing Vessels Use and Options for Review*, FAO Fisheries and Aquaculture Circular No. 1255 (Rome, FAO, 2022); available at <https://doi.org/10.4060/cc1017en>.

<sup>432</sup> Art. 18(d). FAO, *Voluntary Guidelines on the Marking of Fishing Gear* (Rome, FAO, 2019), Licence: CC BY-NC-SA 3.0 IGO; available at <https://www.fao.org/3/ca3546t/ca3546t.pdf>.

<sup>433</sup> FAO, *International Guidelines on Bycatch Management and Reduction of Discards*.

*Directives internationales sur la gestion des prises accessoires et la réduction des rejets en mer.*

*Directrices Internacionales para la Ordenación de las Capturas Incidentales y la Reducción de los Descartes* (Rome, FAO, 2011); available at <https://www.fao.org/responsible-fishing/resources/detail/en/c/1316864/>.

(3)(f)	Supervision of trans-shipment	FAO Voluntary Guidelines for Transshipment <sup>434</sup>
(3)(f)	Monitoring of landed catches and market statistics	FAO Voluntary Guidelines for Catch Documentation Schemes <sup>435</sup>
(3)(g)(iii)	Development and implementation of vessel monitoring systems	FAO Technical Guidelines for Responsible Fisheries <sup>436</sup>
(3)(i)	Regulating fishing activities to ensure compliance with measures <sup>437</sup> including those aimed at minimizing catches of non-target species	FAO Guidelines to Prevent and Reduce Bycatch of Marine Mammals in Capture Fisheries <sup>438</sup> FAO Technical Guidelines for Responsible Fisheries: Best Practices to Reduce Incidental Catch of Seabirds in Capture Fisheries <sup>439</sup>

RFMO/As also provide various tools for implementing and enforcing obligations in article 18, such as relevant conservation and management measures, records of authorized vessels, IUU vessel lists, reporting requirements (including vessel monitoring and vessel reporting systems), compliance reports and programmes for observers, and boarding and inspection.

The General Assembly has addressed several of the elements of article 18, including encouraging actions by States for the following:

- Requiring authorizations for flag vessels fishing in areas beyond national jurisdiction
- Establishing mandatory vessel monitoring systems, and requiring they be carried by all vessels fishing on the high seas
- Establishing and undertaking cooperative surveillance and enforcement activities
- Developing and adopting effective monitoring, control and surveillance measures for trans-shipment, particularly at sea<sup>440</sup>

The General Assembly also urged flag States to implement the Voluntary Guidelines for Flag State Performance as soon as possible including, as a first step, by carrying out a voluntary assessment.<sup>441</sup>

<sup>434</sup> FAO, *Voluntary Guidelines for Transshipment/Directives volontaires relatives au transbordement/Directrices voluntarias para los transbordos* (Rome, FAO, 2023); available at <https://www.fao.org/3/cc5602t/cc5602t.pdf>.

<sup>435</sup> FAO, "Voluntary guidelines for catch documentation schemes (Rome, FAO, 2017), <https://www.fao.org/3/i8076en/i8076EN.pdf>.

<sup>436</sup> FAO, *Fishing Operations. 1. Vessel Monitoring Systems*, FAO Technical Guidelines for Responsible Fisheries, No. 1, Suppl. 1 (Rome, FAO, 1998), <https://www.fao.org/fishery/en/publications/12913>.

<sup>437</sup> Subregional, regional or global measures.

<sup>438</sup> FAO, *Fishing Operations. Guidelines to Prevent and Reduce Bycatch of Marine Mammals in Capture Fisheries*. FAO Technical Guidelines for Responsible Fisheries, No. 1, Suppl. 4 (Rome, FAO, 2021), <https://doi.org/10.4060/cb2887en>.

<sup>439</sup> FAO, *Fishing Operations. 2. Best Practices to Reduce Incidental Catch of Seabirds in Capture Fisheries*. FAO Technical Guidelines for Responsible Fisheries, No. 1, Suppl. 2 (Rome, FAO, 2009), <https://www.fao.org/3/i1145e/i1145e.pdf>.

<sup>440</sup> A/RES/77/118, paras. 94, 120, 129 and 130.

<sup>441</sup> A/RES/77/118, para. 118.

The outcomes of the 2023 Review Conference referred to several aspects of implementing article 18. They included strengthening flag State responsibility,<sup>442</sup> assessment of flag State performance,<sup>443</sup> control over activities of nationals<sup>444</sup> and regulation of transshipment.<sup>445</sup>

FAO has taken action to promote the implementation of its Voluntary Guidelines for Flag State Performance since their adoption in 2015, including through RFMO/As. Moreover, FAO noted that a second version of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels had been released in 2022 and that the record included 40 per cent of the global eligible fleet as of November 2022.

Mindful that States are required to effectively exercise their jurisdiction and control in administrative, technical and social matters over ships flying their flag,<sup>446</sup> two related matters for flag State control over fishing vessels are agreements concerning safety and labour.<sup>447</sup>

In this regard, the General Assembly encouraged States to consider signing, ratifying, accepting, approving or acceding to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.<sup>448</sup> It also noted the capacity-building work of the FAO on decent working conditions and safety at sea.<sup>449</sup>

The General Assembly and the 2023 Review Conference both did, as follows:

- Encouraged States to become parties to the International Labour Organization (ILO) Work in Fishing Convention, 2007 (No. 188) and implement the guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188).<sup>450</sup>
- Urged flag States to strengthen effective jurisdiction and control over vessels flying their flag while reaffirming the importance of the responsibilities of flag States regarding fishing vessels flying their flag, including with respect to safety at sea and labour conditions on fishing vessels.<sup>451</sup>

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<sup>442</sup> A/CONF.210/2023/6, annex, part C, para. 1. Outcomes encouraged: cooperation on examining and clarifying the “genuine link” in relation to the duty of flag States to exercise effective control over flag vessels; develop or amend national legislation; maintain and make public records of flag vessels that operate in areas beyond national jurisdiction; strengthen capacity to take action against flag vessels that have engaged in IUU fishing activity; develop legal measures for prohibiting their flag supply, transport and refuelling vessels from engaging in operations with vessels on RFMO/A IUU vessel lists; encourage the use of cost-effective tools and emerging technologies to strengthen effective control over fishing vessels.

<sup>443</sup> A/CONF.210/2023/6, annex, part C, para. 2. Outcomes encouraged: promotion of the implementation of the FAO Voluntary Guidelines for Flag State Performance, including by urging flag States to carry out assessments (flag States may decide to undertake self-assessments or external assessments), and development of regional or global guidelines for fisheries sanctions to be applied by flag States.

<sup>444</sup> A/CONF.210/2023/6, annex, part C, para. 5. Note that art. 91 of the Convention provides that ships have the nationality of the State whose flag they are entitled to fly. Although control over nationals is not specifically referenced in art. 18, this outcome is relevant as it calls, inter alia, to control fishing and fishing-related activities of their nationals that undermine the effectiveness of conservation and management measures, and for cooperation to ensure compliance.

<sup>445</sup> A/CONF.210/2023/6, annex, part C, para. 8. This relates to art. 18(3)(f) and (h), which call for flag State measures to verify catch through supervision of trans-shipment and to regulate trans-shipment on the high seas. States and RFMO/As are encouraged, inter alia, to implement the FAO Voluntary Guidelines for Transshipment.

<sup>446</sup> Art. 94 of the Convention.

<sup>447</sup> A/RES/77/118, para. 193. The General Assembly highlighted the importance of safety at sea and working conditions in the fisheries sector, and welcomed in this regard the close cooperation between the Food and Agriculture Organization of the United Nations, the International Labour Organization and the International Maritime Organization.

<sup>448</sup> A/RES/77/118, para. 85.

<sup>449</sup> A/RES/77/118, para. 86. FAO work emphasizes reducing accidents and fatalities among small-scale fishers, fishing vessel safety standards, and the promotion of insurance and social protection in fisheries. The General Assembly requested the Food and Agriculture Organization of the United Nations to increase its support to developing countries on fishing safety matters and to take a leading role in the establishment of a repository for fisher safety data and accident and mortality information.

<sup>450</sup> A/RES/77/118, para. 194, A/CONF.210/2023/6, annex, part C, para. 1(e).

<sup>451</sup> A/RES/77/118, para. 90, A/CONF.210/2023/6, annex, part C, para. 1(b).

## *Examples of RFMO/A practice*

### *General*

The practice of RFMO/As in relation to flag State control includes the following:<sup>452</sup>

- Taking technical, legal and cooperative measures to establish or strengthen effective control by flag States
- Establishing subregional observation and inspection programmes to ensure that fishing vessels comply with its measures against IUU fishing
- Establishing a committee through which enforcement agencies could coordinate and exchange information
- Maintaining an electronic system allowing for the rapid exchange of information among vessels, port States and flag States
- Embedding a series of flag State requirements in the constitutive instrument, including the establishment of a list of authorized vessels
- Adopting several mechanisms to ensure that flag States do not undermine conservation and management measures
- Undertaking updates and improvements to the compliance and enforcement schemes
- Routinely assessing the compliance of parties with its control and enforcement scheme
- Requiring members to ensure that their vessels comply with RFMO/A measures, and monitoring compliance annually by a compliance committee
- Requiring parties to conduct regular self-assessments
- Requiring parties to notify the RFMO/A secretariat of vessels authorized to fish certain fish stocks
- Implementing the FAO Port State Measures Agreement and in addition requiring flag State validation before entry into port is authorized
- Adopting or strengthening measures on trans-shipment
- Developing a set of proposals for effective enforcement measures against flag States of vessels engaged in IUU fishing, noting that the lack of a vessel-listing procedure of vessels engaged in IUU fishing had been the main obstacle to their implementation, and developing plans for a relevant list to be launched
- Developing capacity-building initiatives to assist developing countries in meeting their flag State obligations
- Supporting contracting parties to enhance control of their vessels
- Enacting a compliance monitoring scheme to bolster the ability of flag States to satisfy their relevant obligations

Concerning strengthening flag State control, some measures taken by RFMO/As relate to inspection and licencing; monitoring and data-sharing; labour standards for crew; safety at sea, including for observers; and the establishment of IUU vessel lists.<sup>453</sup>

### *Specific*

A conservation and management measure of the South Pacific Regional Fisheries Management Organization provides a mechanism to monitor and improve implementation of, and compliance

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<sup>452</sup> A/CONF.210/2023/1, paras. 198–99.

<sup>453</sup> Examples include development of an online compliance case file system; putting in place an electronic reporting system; recruiting a compliance officer to help flag States comply with conservation and management measures; adopting a non-binding resolution on labour standards for crew on fishing vessels; and a recommendation regarding decent working conditions in specific fisheries while including fishing safety in a fishing and aquaculture integration policy.

with, obligations arising under the Convention and conservation and management measures by members and cooperating non-contracting parties.<sup>454</sup>

The Western and Central Pacific Fisheries Commission has adopted a comprehensive Compliance Monitoring Scheme,<sup>455</sup> focused on assessing compliance by members, cooperating non-members and participating territories (CCMs) with their obligations, but not to assess compliance by individual vessels. The Scheme is also designed to, among others, identify areas in which technical assistance or capacity-building may be needed to assist CCMs to attain compliance and to identify aspects of conservation and management measures that may require refinement or amendment for effective implementation. It includes an Online Compliance Case File System, established to store, manage and make available information to assist CCMs with tracking alleged violations by their flagged vessels.

### *Examples of State practice*

The practice of States in implementing flag State control includes the following:<sup>456</sup>

- Seeking cooperation with other flag States in RFMO/As with a view to deregistering vessels known to engage in IUU fishing
- Requesting authorization from other States to board their flagged vessels to verify compliance with RFMO/A measures
- Controlling its fishing vessels through a suite of measures, including using licences to list all measures to which a vessel was subject, comprising quotas, gear restrictions, time/area closures and reporting and monitoring requirements
- Controlling trans-shipments through, inter alia, catch documentation schemes, a regional observer programme and prohibiting trans-shipment at sea
- Strictly enforcing RFMO/A frameworks through a control system that includes inspection procedures, satellite monitoring, sending data with operational results in a timely manner and full implementation of the procedures for a relevant catch documentation system
- Implementing RFMO/A obligations through domestic regulations, whose violation could result in penalties including the suspension of licences and the detention of vessels
- Employing a system to monitor its vessels in RFMO/A areas in close coordination with the RFMO/A, with a view to ensuring compliance with conservation and management measures
- Enhancing monitoring, control and surveillance measures in its fleet to gain better and more timely data flows; submitting reports pursuant to RFMO/A obligations; and working with cooperating contracting parties to improve measures, including with a view to FAO trans-shipment guidelines and RFMO/A catch document schemes

Concerning strengthened flag State control, States report exercising effective control over flag vessels through national legal frameworks<sup>457</sup> and using a range of monitoring, control and surveillance tools.<sup>458</sup>

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<sup>454</sup> CMM 10/2020. Conservation and Management Measure for the Establishment of a Compliance and Monitoring Scheme in the SPRFMO Convention Area; available at <https://www.sprfmo.int/assets/Fisheries/Conservation-and-Management-Measures/2021-CMMs/CMM-10-2020-CMS-31Mar20.pdf>.

<sup>455</sup> CMM 2023-04; available at <https://cmm.wcpfc.int/>.

<sup>456</sup> A/CONF.210/2023/1, paras. 196–97.

<sup>457</sup> Including modernizing fisheries legislation to ensure a robust regulatory framework; revising fisheries control systems; and implementing limited entry licence systems for all flag fishing vessels operating on the high seas.

<sup>458</sup> For example, cooperating with other flag States in taking appropriate action with respect to IUU fishing, including by sharing information on activities, verifying compliance with RFMO/A measures, and deregistering vessels known to undertake IUU fishing activities; and exchanging data systematically in real time with automatic computerized data validation.

### 3. Implementation checklist

#### IMPLEMENTATION CHECKLIST

##### ARTICLE 18

##### DUTY OF FLAG STATES

##### UNFSA

- 1) Are national measures in place that ensure flag vessels that fish on the high seas comply with subregional and regional conservation and management measures and do not engage in any activity that undermines the effectiveness of the measures? (UNFSA, art. 18[1])
- 2) Are vessels flying the flag of your State authorized for fishing on the high seas only where your State is able to effectively exercise its responsibilities with respect to those vessels under the Convention and Agreement? (UNFSA, art. 18[2])
- 3) Are measures in place with respect to national flag vessels that provide the following:
  - (a) Control on the high seas by licences, authorizations or permits in accordance with applicable RFMO/A procedures
  - (b) Regulations that specify certain requirements relating to licences, authorizations or permits, including required terms and conditions, carrying it on board, producing it to an authorized person and prohibiting unauthorized fishing in areas under the national jurisdiction of other States<sup>459</sup>
  - (c) A national record of fishing vessels authorized to fish on the high seas and provision of access to the information upon the request of a directly interested State subject to national laws concerning its release
  - (d) Marking of fishing vessels and fishing gear in accordance with international marking systems
  - (e) Recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with RFMO/A standards for data collection
  - (f) Verifying the catch of target and non-target species through means such as observer programmes, inspection schemes, uploading reports, supervision of trans-shipment and monitoring of landed catches and market statistics
  - (g) Monitoring, control and surveillance of such vessels, their fishing operations and related activities by the implementation of national inspection schemes and subregional and regional schemes for cooperation pursuant to articles 21 and 22<sup>460</sup>
  - (h) Regulation of trans-shipment on the high seas
  - (i) Ensuring compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species? (UNFSA, art. 18[3][a]–[i])

<sup>459</sup> In relation to licences, permits or authorizations, they relate to the application of terms and conditions, prohibition of high seas fishing except in accordance with the terms and conditions, and require vessels fishing on the high seas to carry them on board at all times and produce them for inspection. Flag States must also ensure that their vessels do not conduct unauthorized fishing within areas under the national jurisdiction of other States.

<sup>460</sup> They are inspection schemes and schemes for cooperation in enforcement pursuant to arts. 21 and 22; observer programmes; and vessel monitoring systems.

- 4) Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect for your State, are national measures for flag vessels compatible with that system? (UNFSA, art. 18[4])

### Supplementary

- 1) Has an assessment of your country's performance as a flag State been undertaken? (FAO Voluntary Guidelines on Flag State Performance)
- 2) Are the following FAO guidelines applied as appropriate in relation to your country's flag vessels?
  - (a) The Marking and Identification of Fishing Vessels: Best practices<sup>461</sup>
  - (b) FAO Voluntary Guidelines on the Marking of Fishing Gear<sup>462</sup>
  - (c) FAO Guidelines on by-catch and discards<sup>463</sup>
  - (d) FAO Voluntary Guidelines for Transshipment<sup>464</sup>
  - (e) FAO Voluntary Guidelines for Catch Documentation Schemes<sup>465</sup>
- 3) Does your State exercise effective jurisdiction and control over its flag vessels in respect to safety at sea and labour conditions on fishing vessels, including by becoming party to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 and the International Labour Organization (ILO) Work in Fishing Convention, 2007 (No. 188)? (A/RES/77/118, paras. 85, 90, 194, A/CONF.210/2023/6, annex, part C, para. 1[b] and [e])

## PART VI COMPLIANCE AND ENFORCEMENT

### 1. Overview and background

Part VI of the Agreement sets out obligations for compliance monitoring and enforcement by the flag State, and related cooperation internationally and at subregional and regional levels. It further sets out basic procedures for high seas boarding and inspection through RFMO/As that may be used pending adoption of such procedures by RFMO/As. General obligations regarding the establishment of port State measures are also provided.

PART VI	
Article 19	Compliance and enforcement by the flag State
Article 20	International cooperation in enforcement
Article 21	Subregional and regional cooperation in enforcement
Article 22	Basic procedures for boarding and inspection pursuant to article 21
Article 23	Measures taken by a port State

<sup>461</sup> Available at <https://www.fao.org/3/I9156EN/I9156en.pdf>.

<sup>462</sup> Art. 18(d). FAO, *Voluntary Guidelines on the Marking of Fishing Gear* (Rome, FAO, 2019), Licence: CC BY-NC-SA 3.0 IGO; available at <https://www.fao.org/3/ca3546t/ca3546t.pdf>.

<sup>463</sup> FAO, *International Guidelines on Bycatch Management and Reduction of Discards* (Rome, FAO, 2011); available at <https://www.fao.org/responsible-fishing/resources/detail/en/c/1316864/>.

<sup>464</sup> FAO, *Voluntary Guidelines for Transshipment* (Rome, FAO, 2023); available at <https://www.fao.org/3/cc5602t/cc5602t.pdf>.

<sup>465</sup> FAO, "Voluntary guidelines for catch documentation schemes" (Rome, FAO, 2017); available at <https://www.fao.org/3/I8076en/I8076EN.pdf>.



Part VI shares a similar historical context as that described for Part V. It is based on the duty of a flag State to exercise jurisdiction and control over its vessels in accordance with article 94 of the Convention on Duties of the Flag State but has significantly broader application appropriate for fishing vessels. For example, compliance and enforcement by the flag State includes the duty to enforce violations of conservation and management measures no matter where they occur and to implement certain procedures and criteria for sanctions.

The provisions relating to subregional and regional cooperation in enforcement, as well as high seas boarding and inspection, were among the most discussed during the UNFSA negotiating Conference. Claims by coastal States and fishing States are summarized below.<sup>466</sup>

Coastal States claimed that enforcement activities such as boarding, investigation, arrest and detention by States other than the flag State, particularly coastal States, should be allowed. Enforcement activities against vessels of non-participants to a relevant RFMO/A should also be allowed in the area of responsibility of that RFMO.

Fishing States claimed that boarding and/or investigation on the high seas by States other than the flag State could be allowed only when such an agreement was established within the relevant RFMO. The modality of boarding and investigation should be determined within the framework of the responsible RFMO/A in light of fish stock conditions and the characteristics of fisheries concerned. Arrest and detention by States other than the flag State could not be allowed since it would deviate substantially from the principle of flag State jurisdiction over the vessel. Enforcement activities on the high seas against vessels of non-participants to RFMO/As should not be allowed or at least studied cautiously if it was not agreed by the flag State concerned.

The resulting texts of articles 21 and 22 reflect a compromise between those States that favoured robust enforcement provisions and those that were concerned with diluting the exclusive jurisdiction of the flag State over vessels flying its flag on the high seas provided for in the Convention.

This Part further elaborates the basic duties of States to cooperate in relation to straddling fish stocks and highly migratory fish stocks to ensure their conservation, as required in articles 63 and 64 of the Convention.

The requirements of the Convention on the Conservation and Management of the Living Resources of the High Seas also provide a legislative basis for this Part.<sup>467</sup>

## **Article 19 - Compliance and enforcement by the flag State**

### *Article 19 - Compliance and enforcement by the flag State*

<sup>466</sup> From Nomura, p. 19.

<sup>467</sup> They include the following:

- The right of all States for their nationals to engage in fishing on the high seas subject to, inter alia, their treaty obligations (art. 116)
- The duties of States to take, or cooperate with other States in taking, such measures for their respective nationals as may be necessary (art. 117)
- The obligation for States to cooperate with each other, enter into negotiations with a view to taking necessary measures where their nationals exploit identical living resources or different resources in the same area and, as appropriate, to cooperate to establish RFMOs to this end (art. 118)

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

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

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

## 1. Highlights

Provisions of the Agreement relating to compliance and enforcement by the flag State are summarized below. This article is the first of three that address enforcement; articles 20 and 21 provide, respectively, for international, and subregional and regional, cooperation in enforcement.

States must ensure compliance by vessels flying their flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, they must do, as follows:

(a) Enforce such measures irrespective of where violations occur.

(b) Investigate immediately and fully any alleged violation of RFMO/A measures and report promptly to the State alleging the violation and the relevant RFMO/A on the progress and outcome of the investigation.

(c) Require any flag vessel to give certain information to the investigating authority.<sup>468</sup>

<sup>468</sup> Information must be given regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation.

- (d) If sufficient evidence is available, refer the case to its authorities with a view to instituting proceedings without delay and, where appropriate, detain the vessel concerned.
- (e) Ensure that, where a vessel has been involved in the commission of a serious violation of the measures, it does not engage in fishing operations on the high seas until all outstanding sanctions imposed by the flag State have been complied with.<sup>469</sup>

All investigations and judicial proceedings must be carried out expeditiously. Sanctions must be adequate in severity to be effective in securing compliance and to discourage violations; deprive offenders of the benefits from their illegal activities; and include provisions that may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on fishing vessels.<sup>470</sup>

The Compliance Agreement also provides a similar requirement for sanctions.<sup>471</sup>

## 2. Implementation guidance and practice

The General Assembly has urged flag States to strengthen or exercise effective jurisdiction and control over, inter alia:

- Vessels flying their flag, including through national rules and regulations to ensure they do not engage in illegal, unreported and unregulated fishing<sup>472</sup>
- Their nationals, including beneficial owners and vessels flying their flag, to deter them from engaging in or supporting illegal, unreported and unregulated fishing<sup>473</sup>

Encouragement was also given to States that have not yet done so to establish penalties for non-compliance by vessels and their nationals that are adequate in severity for effectively securing compliance, deterring further violations and depriving offenders of the benefits from their illegal, unreported and unregulated fishing activities.<sup>474</sup> This was echoed by the Review Conference in 2023.<sup>475</sup>

The General Assembly encouraged the development of regional guidelines for States to use in establishing sanctions for non-compliance by vessels flying their flag and by their nationals as well as in evaluating their systems of sanctions to ensure that they are effective in securing compliance and deterring violations.<sup>476</sup>

The Review Conference in 2023 urged all flag States to implement the Voluntary Guidelines for Flag State Performance, including, as a first step, by carrying out a voluntary assessment.<sup>477</sup>

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<sup>469</sup> Art. 19(1)(a)–(e).

<sup>470</sup> Art. 19(2).

<sup>471</sup> Art. III(8).

<sup>472</sup> A/RES/77/118, para. 90.

<sup>473</sup> A/RES/77/118, para. 91.

<sup>474</sup> A/RES/77/118, para. 91.

<sup>475</sup> A/CONF.210/2023/6, annex, part C, para. 5.

<sup>476</sup> A/RES/77/118, para. 190, see also A/CONF.210/2023/6, annex, part C, para. 2(b).

<sup>477</sup> A/CONF.210/2023/6, annex, part C, para. 2(a).

Some publications have been developed at regional level to facilitate development and implementation of best practices legislation relating to monitoring, control and enforcement, including provisions for the control of nationals.<sup>478</sup>

The FAO IPOA-IUU and associated guidelines,<sup>479</sup> based on the Convention, the Agreement and other pertinent instruments, clearly show how flag State duties may be exercised to combat IUU fishing as noted in relation to article 17 above. Although the term “IUU fishing” does not appear in the Agreement, its provisions provide an important framework for addressing IUU fishing activities on the high seas.

### *Examples of RFMO/A practice*

Measures reported by RFMO/As on control over fishing activities of nationals have included the following:<sup>480</sup>

- Adopting a regional plan of action on IUU fishing in which parties are to take measures ensuring their nationals do not support or engage in IUU fishing activities
- Updating a recommendation to promote compliance by nationals of contracting parties, cooperating non-contracting parties, entities or fishing entities
- Strengthening measures against nationals involved in IUU fishing
- Taking measures to authorize the Commission to monitor the activities of nationals and fishing vessels of cooperating non-members
- Establishing an IUU vessel list that specified that details of owners, including beneficial owners, if any, must be included in the draft, provisional and final IUU vessel lists

### *Examples of State practice*

Measures reported by States to control fishing activities of nationals have included the following:<sup>481</sup>

- Legislation to deter nationals from IUU fishing activities, impose sanctions and take enforcement action, including requirements for compliance with applicable measures of relevant RFMO/As
- Legislation relating to the selling or exporting of fishing vessels to those involved in the operation of IUU fishing vessels
- Restrictions on funding to operators involved in the operation, management or ownership of fishing vessels on an IUU fishing vessel list
- Provisions for international cooperation to assist with the identification of nationals involved in IUU fishing
- Vessel monitoring systems employed for a large part of the fleet
- The inclusion of vessels on the official lists of relevant regional fisheries management organizations and arrangements

## **3. Implementation checklist**

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<sup>478</sup> For example, Ecofish has provided best practices legislation and an assessment of MCS capacity for the East Africa – Southern African – Indian Ocean Region: J. Swan, *Comprehensive Review of Fisheries MCS Legal Capacity in the EA-SA-IO Region*, published on 23 November 2022; available at <https://ecofish-programme.org/comprehensive-review-of-fisheries-mcs-legal-capacity-in-the-ea-sa-io-region/>; and J. Swan, “Fisheries monitoring, control and surveillance model legislation,” published on 9 February 2023; available at <https://ecofish-programme.org/fisheries-monitoring-control-and-surveillance-model-legislation/>.

<sup>479</sup> Available at <https://www.fao.org/in-action/globefish/publications/details-publication/en/c/346127/>.

<sup>480</sup> A/CONF.210/2023/1, paras. 230 and 231.

<sup>481</sup> A/CONF.210/2023/1, para. 229.

## IMPLEMENTATION CHECKLIST

### ARTICLE 19

#### COMPLIANCE AND ENFORCEMENT BY THE FLAG STATE

##### UNFSA

- 1) Is compliance by flag vessels with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks ensured, inter alia, by national requirements and measures to:
  - (a) Enforce such measures irrespective of where violations occur
  - (b) Investigate immediately and fully any alleged violation of RFMO/A measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant RFMO/A on the progress and outcome of the investigation
  - (c) Require any flag vessel to give certain information to the investigating authority<sup>482</sup>
  - (d) If satisfied that sufficient evidence is available, refer the case to national authorities with a view to instituting proceedings without delay in accordance with national laws and, where appropriate, detain the vessel concerned
  - (e) Ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of the measures, it does not engage in fishing operations on the high seas until all outstanding sanctions imposed by the flag State in respect of the violation have been complied with? (UNFSA, art. 18[1][a]–[e])
- 2) Are there procedures in place to ensure that all investigations and judicial proceedings can be carried out expeditiously? (UNFSA, art. 18[2])
- 3) Are sanctions adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and to deprive offenders of the benefits accruing from their illegal activities? (UNFSA, art. 18[2])
- 4) Do measures applicable with respect to masters and other officers of fishing vessels include provisions that may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels? (UNFSA, art. 18[2])

##### Supplementary

- 1) Are regional guidelines being developed for States to use in establishing sanctions for non-compliance by vessels flying their flag and by their nationals as well as in evaluating their systems of sanctions to ensure that they are effective in securing compliance and deterring violations? (A/RES/77/118, para. 190, A/CONF.210/2023/6, annex, part C, para. 2)
- 2) Has your State carried out a voluntary assessment in accordance with the FAO Voluntary Guidelines for Flag State Performance? (A/CONF.210/2023/6, annex, part C, para. 2[a])

<sup>482</sup> Including vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation.

## Article 20 - International cooperation in enforcement

### *Article 20 - International cooperation in enforcement*

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

### **1. Highlights**

States must cooperate directly or through RFMO/As to ensure compliance with and enforcement of measures for straddling fish stocks and highly migratory fish stocks.

Requirements address cooperation in the conduct of and exchanging information relating to investigations, vessel identification, making evidence available for prosecuting authorities in other States, flag State investigations, and actions to be taken through RFMO/As to deter vessels that undermine the effectiveness of or otherwise violate RFMO/A measures until appropriate action is taken by the flag State.

Provisions of the Agreement relating to international cooperation in enforcement are summarized more fully below.

States must cooperate directly or through RFMO/As to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.<sup>483</sup>

Flag States investigating an alleged violation may request the assistance of any other State whose cooperation may be useful, and States must endeavour to meet reasonable requests.<sup>484</sup>

Flag States may undertake investigations directly, in cooperation with other interested States or through relevant RFMO/As. Information on the progress and outcomes of the investigations must be provided to all States having an interest in, or affected by, the alleged violation.<sup>485</sup>

States must assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.<sup>486</sup>

States must establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of the measures.<sup>487</sup>

Where there are reasonable grounds for believing a vessel on the high seas has engaged in unauthorized fishing under the jurisdiction of a coastal State, the flag State, at the request of the coastal State, must immediately and fully investigate the matter. The flag State must cooperate with the coastal State in taking appropriate enforcement action and may authorize the coastal State to board and inspect the vessel on the high seas.<sup>488</sup>

States Parties that are members of or participants in an RFMO/A may take action to deter vessels that have engaged in activities that undermine the effectiveness of or otherwise violate the measures established by that RFMO/A from fishing on the high seas until appropriate action is taken by the flag State.<sup>489</sup>

These provisions are complemented by relevant FAO instruments. The FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)<sup>490</sup> recommends measures relating to cooperation in the exchange of information,<sup>491</sup> and the Voluntary

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<sup>483</sup> Art. 20(1).

<sup>484</sup> Art. 20(2).

<sup>485</sup> Art. 20(3).

<sup>486</sup> Art. 20(4).

<sup>487</sup> Art. 20(5).

<sup>488</sup> Art. 20(6).

<sup>489</sup> Art. 20(7).

<sup>490</sup> Available at <https://www.fao.org/fishery/en/ipoa-iuu>.

<sup>491</sup> Paras. 80.2, 80.4, 80.5, 81, 81.2, 81.2, 81.3, 81.4.

Guidelines on Flag State Performance encourages flag States to have an enforcement regime in place with a minimum framework, including cooperation with RFMO/As relating to enforcement.<sup>492</sup>

An International Criminal Police Organization (INTERPOL) 2018 publication, titled “International Law Enforcement Cooperation in the Fisheries Sector: A Guide for Law Enforcement Practitioners”<sup>493</sup> aims at enhancing and developing the capacity, capability and cooperation of States to effectively tackle illegal fishing and associated crimes.

## **2. Implementation guidance and practice**

The General Assembly has emphasized the importance of the provisions of the Agreement relating to bilateral, subregional and regional cooperation in enforcement, and urged continued efforts in this regard.<sup>494</sup> It has also done the following:

- Urged enhanced coordination among all relevant States and RFMO/As in efforts in relation to comprehensive monitoring, control and surveillance measures and compliance and enforcement schemes<sup>495</sup>
- Urged States to establish mandatory vessel monitoring, control and surveillance systems, in particular to require that vessel monitoring systems be carried by all vessels fishing on the high seas as soon as practicable<sup>496</sup>
- Encouraged States to establish and undertake cooperative surveillance and enforcement activities<sup>497</sup>

The outcomes of the Review Conference in 2023:

- Encouraged measures to prevent fishing vessels without nationality from engaging in fishing or fishing-related activities and to take effective enforcement action where this occurs<sup>498</sup>
- Called for improved cooperation in information-sharing, taking into account the role of the INTERPOL and other enforcement bodies<sup>499</sup>
- Recommended various actions for strengthening compliance, cooperation and enforcement schemes in RFMO/As<sup>500</sup>

The 2016 Review Conference recommended facilitation of cooperation to ensure investigations and adequate sanctions,<sup>501</sup> but generally, consolidated information on practices relating to investigations by States, assistance in investigations, making evidence available to prosecuting authorities in other States and cooperation with other States in taking appropriate enforcement action is not available.

The following international instruments relevant for fisheries also provide for international cooperation in implementation and enforcement. They could be drawn upon to strengthen cooperation in appropriate cases.

### *FAO Port State Measures Agreement*<sup>502</sup>

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<sup>492</sup> Paras. 32(e).

<sup>493</sup> Available at <https://www.seafish.org/responsible-sourcing/tools-for-ethical-seafood-sourcing/records/interpol/>.

<sup>494</sup> A/RES/77/118, para. 49.

<sup>495</sup> A/RES/77/118, para. 117.

<sup>496</sup> A/RES/77/118, para. 120.

<sup>497</sup> A/RES/77/118, para. 129.

<sup>498</sup> A/CONF.210/2023/6, annex, part C, para. 3.

<sup>499</sup> A/CONF.210/2023/6, annex, part C, para. 5(b).

<sup>500</sup> A/CONF.210/2023/6, annex, part C, para. 6.

<sup>501</sup> Reported in A/CONF.210/2023/1, para. 228.

<sup>502</sup> <https://www.fao.org/3/i5469t/i5469t.pdf>.



Parties must cooperate, at the subregional, regional and global levels, in the effective implementation of the Agreement including, where appropriate, through FAO or regional fisheries management organizations and arrangements.<sup>503</sup>

Where, following port State inspection, a flag State party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing-related activities in support of such fishing, it must immediately and fully investigate the matter and, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.<sup>504</sup>

Each party must, in its capacity as a flag State, report to other parties, relevant port States, and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken with respect to vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing-related activities in support of such fishing.<sup>505</sup>

*United Nations Convention on Transnational Organized Crime*<sup>506</sup>

This Convention is applicable to some fisheries offences; it contains several articles that cater for international cooperation in enforcement, including the following:

Article 13. International cooperation for purposes of confiscation

Article 16. Extradition

Article 19. Joint investigations

Article 21. Transfer of criminal proceedings

Article 27. Law enforcement cooperation

### *Examples of RFMO/A practice*

#### *General*

RFMO/A practice to review compliance by members and cooperating non-members, usually through compliance committees, as well as to cooperate in enforcement is generally comprehensive and described in relation to article 17 above.

#### *Specific*

The North-East Atlantic Fisheries Commission's legally binding Scheme of Control and Enforcement<sup>507</sup> sets out detailed requirements for the sharing of a vessel monitoring system and catch data by contracting parties. It includes arrangements for shared monitoring, control and enforcement measures, joint at-sea patrols and extensive arrangements to regulate trans-shipment in the Regulatory Area and in port. It also provides for identification of IUU fishing activity and an active system of information-sharing on IUU activity with other RFMOs globally.

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<sup>503</sup> Art. 6(3).

<sup>504</sup> Art. 20(4).

<sup>505</sup> Art. 20(5).

<sup>506</sup> Available at <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>507</sup> Available at <https://www.neafc.org/mcs/scheme>.

The South Pacific Regional Fisheries Management organization participates in compliance-related organizations and initiatives,<sup>508</sup> including the Pan-Pacific Fisheries Compliance Network<sup>509</sup> and the International Monitoring Control and Surveillance Network.<sup>510</sup>

### *Examples of State practice*

Actions taken by States that cooperate to promote compliance and enforcement at a regional level are described in relation to article 17 above.

## **3. Implementation checklist**

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 20</b></p> <p style="text-align: center;"><b>INTERNATIONAL COOPERATION IN ENFORCEMENT</b></p> <p><b>UNFSA</b></p> <ol style="list-style-type: none"> <li>1) Are there procedures in place to ensure cooperation with other States, directly or through RFMO/As to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks, including through investigations? (UNFSA, art. 20[1] and [3])</li> <li>2) In the investigation of an alleged violation, does your State as the investigating State have a procedure in place to request the assistance of any other State whose cooperation may be useful, and give such assistance as may be reasonably requested? (UNFSA, art. 20[2])</li> <li>3) In undertaking investigations,<sup>511</sup> would information on the progress and outcomes be provided to all States having an interest in, or affected by, the alleged violation? (UNFSA, art. 20[3])</li> <li>4) Is assistance being given to other States in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures? (UNFSA, art. 20[4])</li> <li>5) Are arrangements made for making evidence of alleged violations available to prosecuting authorities in other States, as appropriate? (UNFSA, art. 20[5])</li> <li>6) Where there are reasonable grounds for believing a flag vessel on the high seas has engaged in unauthorized fishing under the jurisdiction of a coastal State, is there a procedure in place for full and immediate investigation at the request of the coastal State, and cooperation with the coastal State in taking appropriate enforcement action, which may include authorizing the coastal State to board and inspect the vessel on the high seas? (UNFSA, art. 20[6])</li> <li>7) Where your State is party to the Agreement and member of or participant in a relevant RFMO/A, does it take action to deter vessels that have engaged in activities that undermine</li> </ol>
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<sup>508</sup> Available at <https://www.sprfmo.int/cooperation/collaboration/>.

<sup>509</sup> Information is available at <https://imcsnet.org/pan-pacific-fisheries-compliance-network-ppfcn>.

<sup>510</sup> Information is available at <https://imcsnet.org/>.

<sup>511</sup> The investigations may be undertaken directly, in cooperation with other interested States or through RFMO/As.

the effectiveness of or otherwise violate the RFMO/A measures from fishing on the high seas until appropriate action is taken by the flag State? (UNFSA, art. 20[7])

## Article 21 - Subregional and regional cooperation in enforcement

### *Article 21 - Subregional and regional cooperation in enforcement*

- 1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.*
- 2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.*
- 3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.*
- 4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.*
- 5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.*
- 6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:*
  - (a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly*

*inform the inspecting State of the results of the investigation and of any enforcement action taken; or*

*(b) authorize the inspecting State to investigate.*

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

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

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

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

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

*(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);*

*(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;*

*(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;*

*(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;*

*(e) using prohibited fishing gear;*

*(f) falsifying or concealing the markings, identity or registration of a fishing vessel;*

*(g) concealing, tampering with or disposing of evidence relating to an investigation;*

*(h) multiple violations which together constitute a serious disregard of conservation and management measures; or*

*(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.*

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

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

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

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

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

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

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

## **1. Highlights**

Provisions of the Agreement relating to subregional and regional cooperation in enforcement are summarized below.

State that are members of or participants in an RFMO/A may board and inspect flag vessels of another State Party in any high seas area covered by the RFMO/A, whether or not that other Party is also a member of or participant in the RFMO/A. The purpose of the boarding and inspection is to ensure compliance with RFMO/A measures relating to straddling fish stocks and highly migratory fish stocks.<sup>512</sup>

Procedures for boarding and inspection and implementation of this article must be established through RFMO/As in accordance with certain criteria, and given due publicity.<sup>513</sup> If procedures as well as subsequent enforcement action are not established, the basic procedures in Article 22 apply.<sup>514</sup>

Prior to taking action under this article and following boarding and inspection, certain actions and measures are required, including informing all States whose vessels fish on the high seas of the form of identification of their authorized inspectors, marking the inspecting vessel as being on government service and designating an authority to receive notifications.<sup>515</sup>

Where there are clear grounds for believing that a vessel has violated RFMO/A measures, the inspecting State must secure evidence and notify the flag State.<sup>516</sup> Requirements for the flag State response are given, including investigating and, as appropriate, taking enforcement action; or authorizing the inspecting State to investigate.<sup>517</sup> In the latter case, the flag State may authorize the inspecting State to take enforcement action in accordance with certain criteria.<sup>518</sup>

Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation and the flag State has failed to respond or take action, certain procedures must be taken including, where appropriate, bringing the vessel to port.<sup>519</sup>

The inspecting State must inform the flag State and the relevant RFMO/A of any further investigation,<sup>520</sup> and require its inspectors to conform with certain standards, procedures and practices.<sup>521</sup>

Article 21 applies, *mutatis mutandis*, to boarding and inspection by a State Party that is a member of or participant in an RFMO/A and that has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 of article 21 in the high seas area covered by such RFMO/A, and the vessel has subsequently, during the

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<sup>512</sup> Art. 21(1).

<sup>513</sup> Art. 21(2).

<sup>514</sup> Art. 21(3).

<sup>515</sup> Art. 21(4).

<sup>516</sup> Art. 21(5).

<sup>517</sup> Art. 21(6).

<sup>518</sup> Art. 21(7).

<sup>519</sup> Art. 21(8).

<sup>520</sup> Art. 21(9).

<sup>521</sup> Art. 21(10).

same fishing trip, entered into an area under the national jurisdiction of the inspecting State.<sup>522</sup>

The Agreement provides additional measures where violations are deemed “serious violations.” Serious violations are defined for the purposes of this article,<sup>523</sup> to which the standard for sanctions described in article 19(2) would be relevant.<sup>524</sup>

The flag State may take action at any time to fulfil its obligations under article 19 with respect to an alleged violation. The inspecting State, where the vessel is under its direction, must release the vessel on request and provide the flag State full information on its investigation.<sup>525</sup>

This article is without prejudice to the right of the flag State to take measures, including proceedings to impose penalties.<sup>526</sup>

This article applies to boarding and inspection by a State Party which is a member of or participant in an RFMO/A, and which has clear grounds for believing that a fishing vessel flagged to another State Party has engaged in any activity on the high seas contrary to the measures of the RFMO/A and has subsequently during the same fishing trip entered into an area under the national jurisdiction of the inspecting State.<sup>527</sup>

Where an RFMO/A has established an alternative mechanism which effectively discharges the obligations under this Agreement to ensure compliance with its conservation and management measures, its members may agree to limit the application of paragraph 1 as between themselves in respect of measures established in high seas areas.<sup>528</sup>

Actions taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures must be proportionate to the seriousness of the violation.<sup>529</sup>

Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel and take such action as may be appropriate in accordance with international law.<sup>530</sup>

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<sup>522</sup> Art. 21(14).

<sup>523</sup> Art. 21(11)(a)–(i): (a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with art. 18, para. 3(a); (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement; (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement; (d) directed fishing for a stock that is subject to a moratorium or for which fishing is prohibited; (e) using prohibited fishing gear; (f) falsifying or concealing the markings, identity or registration of a fishing vessel; (g) concealing, tampering with or disposing of evidence relating to an investigation; (h) multiple violations that together constitute a serious disregard of conservation and management measures; or (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

<sup>524</sup> Art. 19(2) provides: “Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.” However, States parties are not directed by this provision to treat serious infractions as criminal offences under their domestic law.

<sup>525</sup> Art. 21(12).

<sup>526</sup> Art. 21(13).

<sup>527</sup> Art. 21(14). The application is *mutatis mutandis*.

<sup>528</sup> Art. 21(15).

<sup>529</sup> Art. 21(16).

<sup>530</sup> Art. 21(17).

States are liable for damages or loss attributable to them arising from action they take that is unlawful or exceeds what is reasonably required.<sup>531</sup>

The Agreement was the first global instrument to establish the possibility of, and procedures for, boarding and inspection of fishing vessels on the high seas by States other than the flag State.<sup>532</sup> The power to board and inspect is circumscribed by safeguards designed to preserve the right of the flag State to assert its primary jurisdiction, to encourage it to do so, and to prevent abuse and risk to human life and safety. It is a recognition that effective enforcement of fisheries measures on the high seas must rely on cooperation among States in a balanced manner.

## 2. Implementation guidance and practice

The General Assembly has invited RFMO/As which have not yet done so to adopt procedures for high seas boarding and inspection that are consistent with articles 21 and 22 of the Agreement, including, inter alia, those to ensure the safety of the crew and the inspectors.<sup>533</sup> The call for adoption of procedures was echoed in the outcomes of the 2023 Review Conference, which also called for a review of existing measures.<sup>534</sup>

The General Assembly has urged States parties to the Agreement to take action to implement requirements in article 21(4), including notification of the form of identification issued to boarding and inspection officers and designation of an authority to receive notifications.<sup>535</sup>

FAO voluntary instruments have called for the development of boarding and inspection regimes through RFMO/As.<sup>536</sup>

Reports on the practice of adopting implementing of high seas boarding and inspection schemes by States and RFMO/As have not been routinely consolidated.<sup>537</sup> RFMO/As schemes generally implement the elements of articles 21 and 22 as basic requirements and integrate additional provisions that cater for regional circumstances.

### *Examples of RFMO/A practice*

#### *General*

Generally, RFMO/A practice includes developing the following:

- Multilateral schemes of inspection
- Boarding and inspection procedures
- Measures and procedures to control vessels without nationality

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<sup>531</sup> Art. 21(18).

<sup>532</sup> M. Hayashi, "Enforcement by non-flag States on the high seas under the 1995 Agreement on Straddling and Highly Migratory Fish Stocks," *Georgetown Int'l Environmental Law Review*, vol. 9 (1997). Art. 118 of the Convention calls for cooperation of States in the conservation and management of living resources in areas of high seas and requires cooperation to establish subregional or regional fisheries organizations but does not address boarding and inspection.

<sup>533</sup> A/RES/77/118, paras. 50 and 52.

<sup>534</sup> A/CONF.210/2023/6, annex, part C, para. 6.

<sup>535</sup> A/RES/77/118, paras. 50 and 51.

<sup>536</sup> International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), paras. 24.10 and 80.8. Code of Conduct for Responsible Fisheries, para. 7.7.3.

<sup>537</sup> It was reported in 2005 that although several RFMOs had adopted high seas boarding and inspection schemes based on arts. 21 and 22 of the Agreement, it was both difficult to carry out and dangerous to both boarder and inspector, and that very few States actually had the capacity to carry out such boardings. Lodge and Nandan, "Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995." Some general considerations are in E. Proulx, "High seas boarding and inspection of fishing vessels: A discussion of goals, comparison of existing schemes and draft language." FAO Legal Papers Online (September 2003); available at <https://www.fao.org/3/bb066e/BB066E.pdf>.



- Alternative mechanisms for compliance and enforcement<sup>538</sup>

### *Specific*

The International Commission for the Conservation of Atlantic Tuna has implemented Regional Observer Programmes for bluefin tuna and at-sea trans-shipments<sup>539</sup> as well as a High Seas Boarding and Inspection Scheme for the Mediterranean.<sup>540</sup> Procedures for action in relation to fishing vessels without nationality have been adopted.<sup>541</sup>

The Northwest Atlantic Fisheries Organization has established a comprehensive At-Sea Inspection and Surveillance Scheme<sup>542</sup> to ensure vessels fishing in the Regulatory Area comply with the conservation and management measures.

The South Pacific Regional Fisheries Management Organization has adopted the boarding and inspection procedures for the Convention Area that are in articles 21 and 22 of the Agreement.<sup>543</sup>

### *Examples of State practice*

States generally report joint operations with other States and contribute to the development of harmonized schemes for boarding and inspection in RFMO/As.

## **3. Implementation checklist**

<b>IMPLEMENTATION CHECKLIST</b>	
<b>ARTICLE 21</b>	
<b>SUBREGIONAL AND REGIONAL COOPERATION IN ENFORCEMENT</b>	
<b>UNFSA</b>	
1)	Does national legislation empower duly authorized inspectors to board and inspect vessels on the high seas in accordance with the Agreement to ensure compliance with measures of RFMO/As concerning straddling or highly migratory fish stocks? (UNFSA, art. 21[1])
2)	Are procedures for boarding and inspection and implementation of this article established through RFMO/As in accordance with specified criteria, and are they given due publicity by your State? <sup>544</sup> (UNFSA, art. 21[2])
3)	Are all States whose vessels fish on the high seas in an area of a relevant RFMO/A informed of the form of identification of your State's authorized inspectors; is an inspecting vessel marked as being on government service and has an authority been designated to receive relevant notifications? (UNFSA, art. 21[4])

<sup>538</sup> Including high seas boarding and inspection schemes, observer schemes and vessel monitoring systems. A/CONF.210/2023/1, paras. 238–41.

<sup>539</sup> Available at <https://www.iccat.int/en/ROPbft.html> and <https://www.iccat.int/en/ROP.html>.

<sup>540</sup> Available at <https://www.iccat.int/en/Inspection.html>.

<sup>541</sup> Recommendation 19-09 on Vessel Sightings; available at <https://www.iccat.int/Documents/Recs/compendiopdf-e/2019-09-e.pdf>.

<sup>542</sup> Chap. VI, *NAFO Conservation and Enforcement Measures Handbook*; available at <https://www.nafo.int/Fisheries/MCS/Inspection>.

<sup>543</sup> CMM 11-2023 (Boarding and Inspection); available at [https://www.sprfmo.int/fisheries/conservation-and-management-measures/cmm-11-boarding-and-inspection/#:~:text=CMM%2011%20\(Boarding%20and%20Inspection\)%20relates%20to,CMM%2011%20\(Boarding%20and%20Inspection\)%20SPRFMO%20ha](https://www.sprfmo.int/fisheries/conservation-and-management-measures/cmm-11-boarding-and-inspection/#:~:text=CMM%2011%20(Boarding%20and%20Inspection)%20relates%20to,CMM%2011%20(Boarding%20and%20Inspection)%20SPRFMO%20ha).

<sup>544</sup> Art. 21(2).

- 4) Are inspecting and notification procedures in place that implement standards and obligations in the Agreement in your State's role, as appropriate, as an inspecting State and a flag State? (UNFSA, art. 21[5]–[7])
- 5) Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, are procedures in place that implement standards and obligations in the Agreement? (UNFSA, art. 21[8]–[10])
- 6) Does your State's legislation and do measures of a relevant RFMO/A enable implementation of the meaning of "serious violation" as defined for the purposes of this article, including by non-flag States that must take action proportionate to the seriousness of the violations with respect to vessels that contravene measures? (UNFSA, art. 21[11] and art. 21[16])
- 7) Where a flag State takes action to fulfil its obligations under article 19 with respect to an alleged violation, are legislation or procedures in place to release any vessel under your State's direction, and provide full information on the investigation? (UNFSA, art. 21[12])
- 8) Does legislation authorize national inspectors to board and inspect fishing vessels on the high seas where there are reasonable grounds for suspecting that it is without nationality, and provide that such action as may be appropriate may be taken in accordance with international law? (UNFSA, art. 21[17])

#### **Supplementary**

- 1) As appropriate, are effective boarding and inspection procedures adopted by relevant RFMO/As? (A/RES/77/118, paras. 50 and 52, A/CONF.210/2023/6, annex, part C, para. 6)

#### **Article 22 - Basic procedures for boarding and inspection pursuant to article 21**

##### *Article 22 - Basic procedures for boarding and inspection pursuant to article 21*

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

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

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

*(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;*

*(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;*

*(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and*

*(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.*

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

*3. The flag State shall ensure that vessel masters:*

*(a) accept and facilitate prompt and safe boarding by the inspectors;*

*(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;*

*(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;*

*(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;*

*(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and*

*(f) facilitate safe disembarkation by the inspectors.*

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

## **1. Highlights**

The inspecting State must ensure that its authorized inspectors follow certain procedures for boarding and inspection; they have authority for inspecting the vessel and the contents as specified.

The flag State of the inspected vessel must ensure that the vessel masters take certain cooperative actions during inspections. Where the master refuses to accept boarding and inspection for reasons other than safety at sea, flag States must suspend the authorization to fish, order the vessel to port and advise the inspecting State.

Provisions of the Agreement relating to basic procedures for boarding and inspection pursuant to article 22 are summarized more fully below.

The inspecting State must ensure that its authorized inspectors follow certain procedures for boarding and inspection, in relation to the following:

- (a) Present credentials and text of relevant conservation and management measures, rules, or regulations to the master of the vessel
- (b) Initiate notice to the flag State at the time of the boarding and inspection
- (c) Do not interfere with the master's ability to communicate with flag State authorities
- (d) Provide a copy of the report to the master and flag State authorities, noting any objection or statement that the master wishes to have included
- (e) Promptly leave the vessel following completion of the inspection if evidence of a serious violation is found
- (f) Avoid the use of force except to ensure the safety of the inspector and in circumstances where they are obstructed, and the degree of force must not exceed what is reasonably required<sup>545</sup>

The inspectors have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products, and any relevant documents necessary to verify compliance with the relevant conservation and management measures.<sup>546</sup>

The flag State must ensure that the vessel masters do, as follows:

- (a) Accept and facilitate prompt and safe boarding by the inspectors
- (b) Cooperate with and assist in inspection of the vessel
- (c) Do not obstruct, intimidate or interfere with the inspectors in the performance of their duties
- (d) Allow the inspectors to communicate with the authorities of the flag State and the inspecting State
- (e) Provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors
- (f) Facilitate safe disembarkation by the inspectors<sup>547</sup>

Where the master refuses to accept boarding and inspection in accordance with articles 21 and 22, the flag State must, except where it is necessary to delay boarding for reasons relating to safety at sea, direct the master to submit immediately to boarding and inspection. If the master does not comply, the flag State must suspend the vessel's authorization to fish and order the vessel immediately to port. The flag State must advise its actions to the inspecting State.

As noted above, RFMO/As were to have conducted boarding and inspection in accordance with these requirements if they had not established procedures within two years of the entry into force of the Agreement.<sup>548</sup>

## **2. Implementation guidance and practice**

The General Assembly and Review Conference have addressed articles 21 and 22 together, as reported above.

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<sup>545</sup> Art. 22(1).

<sup>546</sup> Art. 22(2).

<sup>547</sup> Art. 22(3).

<sup>548</sup> Art. 21(3).

In practice, the RFMO/A procedures, where available, supersede the procedures in article 22. Examples of RFMO practice in relation to boarding and inspection are given above under article 21. It is recommended to supplement the implementation checklist with boarding and inspection procedures adopted by relevant RFMO/As.

In case law, the International Tribunal for the Law of the Sea in *M/V "SAIGA" (no. 2)*, considered the requirement in the Agreement concerning avoidance of the use of force by inspecting States.<sup>549</sup> In the particular circumstances of the case, the Tribunal found that the boarding State had used excessive force and endangered human life, and thereby violated the rights of the flag State under international law.<sup>550</sup>

### 3. Implementation checklist

IMPLEMENTATION CHECKLIST	
ARTICLE 22	
BASIC PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO ARTICLE 21	
<b>UNFSA</b>	
1)	Do national legislation and procedures and RFMO/A procedures require authorized officers to follow the specified procedures for boarding and inspection? (UNFSA, art. 22[1])
2)	Do authorized inspectors have authority to inspect all specified places and items to verify compliance with applicable conservation and management measures? (UNFSA, art. 22[2])
3)	As a flag State, are legislation and procedures in place to achieve the following:
	(a) Require vessel masters to comply with specific actions to facilitate and cooperate with boarding and inspection? (UNFSA, art. 22[3])
	(b) Where a vessel master does not comply, to suspend the vessel's authorization to fish and order it to return to port? (UNFSA, art. 22[4])
<b>Supplementary</b>	
2)	As appropriate, where boarding and inspection procedures have been adopted by relevant RFMO/As, does your State have the proper framework in place to implement them? (A/RES/77/118, paras. 50 and 52, A/CONF.210/2023/6, annex, part C, para. 6)

### Article 23 - Measures taken by a port State

<sup>549</sup> Art. 22(1)(f) of the Agreement:

1. The inspecting State shall ensure that its duly authorized inspectors (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

<sup>550</sup> The *M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, paras. 157–59, which referred to the boarding party firing indiscriminately while on the deck although there was no evidence of the use or threat of force from the crew. In the process, considerable damage was done to the ship and to vital equipment in the engine and radio rooms. And, more seriously, the indiscriminate use of gunfire caused severe injuries to two of the persons on board; available at [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_2/published/C2-J-1\\_Jul\\_99.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/published/C2-J-1_Jul_99.pdf).

### *Article 23 - Measures taken by a port State*

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

## **1. Highlights**

Provisions of the Agreement relating to basic procedures for boarding and inspection pursuant to article 21 are summarized below.

A port State has the right and duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures, but must not discriminate in form or fact against the vessels of another State.<sup>551</sup>

A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels when they are voluntarily in its ports or at its offshore terminals.<sup>552</sup>

States may adopt regulations to prohibit landings and trans-shipments where it is established that the catch was taken in a way that undermines high seas conservation and management measures.<sup>553</sup>

Nothing in this article affects the exercise by States of their sovereignty over ports in their territory.<sup>554</sup>

This article was the first to recognize that port States had a right and duty to take measures to support the conservation and management of straddling fish stocks and highly migratory fish stocks. It has been enhanced and extended by the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA).<sup>555</sup>

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<sup>551</sup> Art. 23(1).

<sup>552</sup> Art. 23(2).

<sup>553</sup> Art. 23(3).

<sup>554</sup> Art. 23(4).

<sup>555</sup> Available at <https://www.fao.org/port-state-measures/resources/detail/en/c/1111616/>. Prior to 2009, other FAO fisheries instruments had addressed progressively stronger provisions on port State measures, including the 1993 Compliance Agreement, arts III(7) and V(2); 1995 Code of Conduct for Responsible Fisheries, art. 8.3; and the 2001 IPOA-IUU, paras. 52–64. PSMA entered into force in 2016 and had 76 parties including the European Union at the time of writing. The status is available at <https://www.fao.org/port-state-measures/background/parties-psma/en/>.

The approach taken in the PSMA differs from article 21 of the Agreement in a number of ways, including:

- Does not require vessels to be *voluntarily* in port for inspections and measures to be taken, they may be there for any reason
- Requires States to prohibit the use of ports for several activities additional to landings and trans-shipments<sup>556</sup>
- Is applied, inter alia, to fishing conducted in any marine area that is illegal, unreported or unregulated and to fishing-related activities in support of such fishing, and denial of the use of port is not restricted to violation of measures in high seas areas but is based on clear grounds for believing that a vessel had engaged in such activities.

## 2. Implementation guidance and practice

A FAO publication on the implementation of port State measures provides background on the development of the PSMA, a legislative template for its implementation, a framework for procedures and an explanation of the role of RFMO/As.<sup>557</sup> FAO has also published checklists and technical guidelines that include implementation of port State measures under the PSMA.<sup>558</sup>

The General Assembly has recognized the need for enhanced port State measures to combat illegal, unreported and unregulated fishing, and urged States to cooperate, in particular at the regional level and through RFMO/As, to adopt all necessary port measures, consistent with international law taking into account article 23 of the Agreement, and to further promote the development and application of standards at the regional level.<sup>559</sup>

More specifically, the General Assembly has reaffirmed its call upon States to take all necessary measures consistent with international law, including the prohibition of vessels from accessing their ports followed by a report to the flag State concerned, when there is clear evidence that they are or have been engaged in or have supported illegal, unreported and unregulated fishing, or when they refuse to give information either on the origin of the catch or on the authorization under which the catch has been made.<sup>560</sup>

The outcomes of the 2023 Review Conference addressed participation under PSMA, and, in summary:<sup>561</sup>

- (a) Encouraged States party to PSMA to implement it fully and adopt port State measures through RFMO/As of which they are member, and encouraged States not yet party to PSMA to do so and in the interim adopt port State measures
- (b) Encouraged States RFMO/As that do not have an electronic system in place for exchanging information on port inspections and port denials of foreign fishing vessels, to consider the use of the Global Information Exchange System; and, where such systems exist, called upon

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<sup>556</sup> The use of port must be denied for landing, trans-shipment, packaging and processing of fish that have not been previously landed and for other port services, including, inter alia, refuelling and resupplying, maintenance and drydocking. PSMA, arts 9(6), 11(1) and 18(1).

<sup>557</sup> J. Swan, *Implementation of Port State Measures: Legislative Template, Framework for Procedures, Role of Regional Fisheries Management Organizations* (Rome, FAO, 2016); available at <https://www.fao.org/3/I5801E/i5801e.pdf> and <https://www.fao.org/fishery/en/publications/2684>.

<sup>558</sup> FAO, *Checklists and Technical Guidelines to Combat Illegal, Unreported and Unregulated (IUU) Fishing*, vol. II: *A Legal Checklist of the Main Duties and Responsibilities of Coastal, Flag and Port States, and Internationally Agreed Market-Related Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing* (Rome, FAO, 2021), <https://doi.org/10.4060/cb6186en>.

<sup>559</sup> A/RES/77/118, para. 102.

<sup>560</sup> A/RES/77/118, para. 101.

<sup>561</sup> A/CONF.210/2023/6, annex, part C, para. 6.

FAO to work with RFMO/As and States to ensure the compatibility and interoperability of the Global System with those existing systems

- (c) Called upon States, RFMO/As and other potential donors referred to in the terms of reference to contribute to the trust fund established under part 6 of PSMA and to provide other financial and technical assistance and capacity-building to assist developing States in the implementation of that Agreement.

FAO promotes participation in PSMA, including through development of a prototype of its Global Information Exchange System, a strategy to improve the effectiveness of the Agreement and an ongoing capacity-development programme aimed at facilitating and supporting the implementation of PSMA and related instruments.<sup>562</sup>

### *Examples of RFMO/A practice*

#### *General*

RFMO/As activities to implement article 23, and relevant elaboration by the PSMA have included the following:

- Strengthening relevant measures
- Establishing electronic communications systems that allow for the rapid exchange of information between vessels, port States and flag States
- Adopting measures more stringent than those foreseen in PSMA, such as requiring flag State validation before entry into port
- Capacity development
- Support to cooperating non-parties

#### *Specific*

The International Commission for the Conservation of Atlantic Tuna first adopted measures to be taken by a port State in 2012, and subsequently in 2018 adopted the Recommendation on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.<sup>563</sup>

The Indian Ocean Tuna Commission has adopted a resolution on port State measures<sup>564</sup> significantly similar to the FAO Agreement on Port State Measures, and published a manual on procedures for its implementation.<sup>565</sup> The objective of the manual is to provide a working document for port State authorities to use in the implementation of the resolution, which entered into force on 1 March 2011 and was amended in 2016 to include a provision on the electronic port State measures application (e-PSM).

### *Examples of State practice*

State practice to implement article 23, and relevant elaboration by PSMA has generally included active promotion of the ratification and implementation of PSMA.

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<sup>562</sup> Information on FAO activities related to port State measures, including capacity development, is available at <https://www.fao.org/port-state-measures/background/en/>. FAO notes that port State measures are supported by monitoring, control and surveillance and are supplemented by market access and trade measures.

<sup>563</sup> Recommendation 18-09; available at <https://www.iccat.int/Documents/Recs/compendiopdf-e/2018-09-e.pdf>.

<sup>564</sup> Resolution 16/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; available at <https://iotc.org/sites/default/files/documents/2023/09/IOTC – Compendium of ACTIVE CMMs 16 September 2023.pdf>.

<sup>565</sup> IOTC, *Procedures for the Implementation of the Indian Ocean Tuna Commission Port State Measures* (Victoria, Seychelles, FAO, 2021); available at <https://doi.org/10.4060/cb7113en>.



### 3. Implementation checklist

<b>IMPLEMENTATION CHECKLIST</b>	
<b>ARTICLE 23</b>	
<b>MEASURES TAKEN BY A PORT STATE</b>	
<b>UNFSA</b>	
1)	Can non-discriminatory port State measures be taken, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures? (UNFSA, art. 23[1])
2)	Are legislation and procedures in place to enable effective inspection on board fishing vessels when they are in its ports or at offshore terminals? (UNFSA, art. 23[2])
3)	Does legislation prohibit landings and trans-shipments where it is established that the catch was taken in a way that undermines high seas conservation and management measures? (UNFSA, art. 23[3])
<b>Supplementary</b>	
1)	Has the PSMA been implemented in legislation and procedures, taking into account guidance provided by relevant FAO publications? <sup>566</sup>

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<sup>566</sup> As noted above: J. Swan, *Implementation of Port State Measures*; FAO, *Checklists and Technical Guidelines to Combat Illegal, Unreported and Unregulated (IUU) Fishing*, vol. II.

## PART VII REQUIREMENTS OF DEVELOPING STATES

### Overview and background

Part VII of the Agreement requires full recognition to be given to the special requirements of developing countries in implementing the Agreement, including for conservation and management, development of fisheries and participating in high seas fisheries for straddling fish stocks and highly migratory fish stocks. States must provide assistance, including through the establishment of special funds and other forms of cooperation. Pursuant to Part VII, an Assistance Fund, described below, was established by the General Assembly in 2003 at its fifty-eighth session to assist developing States Parties in the implementation of the Agreement.

PART VII	
Article 24	Recognition of the special requirements of developing States
Article 25	Forms of cooperation with developing States
Article 26	Special assistance in the implementation of this Agreement

The Convention refers to the interests of developing States and contains various requirements for providing assistance to them in matters relating to the marine environment and transfer of technology.<sup>567</sup> However, although Part XIV of the Convention provides for the development and transfer of marine technology,<sup>568</sup> it does not provide for a fund or financing mechanism through which assistance may be provided.

The FAO Compliance Agreement requires parties to cooperate to provide assistance to developing countries to assist them in fulfilling obligations under that Agreement.<sup>569</sup> However, the assistance is directed only at developing country parties, unlike the Agreement, which is aimed more generally at developing States.

The FAO Code of Conduct for Responsible Fisheries suggests forms of cooperation with developing countries in article 5,<sup>570</sup> which are elaborated in the Agreement.

Other international fisheries and environmental instruments have generally recognized the special requirements of developing States since the late 1980s and included provisions to assist them to meet their obligations under the instrument.<sup>571</sup>

### Article 24 - Recognition of the special requirements of developing States

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<sup>567</sup> For example: art. 202, on the provision of scientific and technical assistance for the protection and preservation of the marine environment and control of the marine environment; art. 203, on preferential treatment for developing States in relation to the allocation of funding for prevention of marine pollution; and part XIV on the development and transfer of marine technology.

<sup>568</sup> Art. 266(2) provides "States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States."

<sup>569</sup> Art. VII.

<sup>570</sup> Including that relevant intergovernmental and non-governmental organizations and financial institutions should work for the adoption of measures to address the needs of developing countries, especially in the areas of financial and technical assistance, technology transfer, training and scientific cooperation, and in enhancing their ability to develop their own fisheries as well as to participate in high seas fisheries, including access to such fisheries.

<sup>571</sup> For example, art. 21 of the Convention on Biological Diversity, and establishment of the Global Environmental Facility, which serves as the financial mechanism for several international conventions.

*Article 24 - Recognition of the special requirements of developing States*

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

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

*(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;*

*(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and*

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

## **1. Highlights**

States must give full recognition to the special requirements of developing States in relation to conservation and management of, and development of fisheries for, straddling fish stocks and highly migratory fish stocks and provide assistance to this end.

The special requirements of developing States that must be taken into account are specified.

Provisions of the Agreement in article 24 relating to the recognition of the special requirements of developing States are more fully summarized below:

States must give full recognition to the special requirements of developing States in relation to conservation and management of, and development of fisheries for, straddling fish stocks and highly migratory fish stocks. To this end, assistance must be provided to developing States either directly or through specified<sup>572</sup> and other appropriate international and regional organizations and bodies.<sup>573</sup>

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<sup>572</sup> The United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, and the Commission on Sustainable Development.

<sup>573</sup> Art. 24(1).

In cooperating to establish conservation and management measures for straddling fish stocks and highly migratory fish stocks, States must take into account the special requirements of developing States, in particular:<sup>574</sup>

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

This article is concerned with two issues: assistance to developing States and, while not explicitly stated, allocation of fishing opportunities. The latter must be addressed in the framework of the relevant RFMO/A, but assistance may be addressed in a broader context, both within and outside RFMO/As.

This article requires States to take into account the special requirements of developing States, in particular those in paragraphs (a), (b) and (c).<sup>575</sup> The latter can be seen, inter alia, as an elaboration of the elements of articles 61 and 119 of the Convention, which require measures to be taken for living resources to be qualified by the special requirements of developing States.<sup>576</sup>

This article does not clearly state whether the specified special requirements are applicable to developing States in general, or only to those in the region of the relevant RFMO/A. A consideration in this regard is whether the developing States possess the specified requirements; if not, the article would not have an impact on the establishment of conservation and management measures.

## **2. Implementation guidance and practice**

The General Assembly has urged States Parties to the Agreement, directly or through RFMO/As, to take into account the special requirements of developing States in giving effect to the duty to cooperate in the establishment of conservation and management measures, including the need to ensure, where appropriate, that such measures do not transfer a disproportionate burden of conservation action onto developing States.<sup>577</sup> Ongoing efforts to better develop a common understanding of this concept were noted.

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<sup>574</sup> Art. 24(2).

<sup>575</sup> An interpretation of the differentiated responsibilities and development of a three-step framework that could be applied in the case of proposals for new conservation and management measures to implement this article is proposed in Hussain Sinan and others, "Common but differentiated rights and responsibilities in tuna fisheries management," *Fish and Fisheries*, vol. 23, No. 1 (January 2022); available at <https://onlinelibrary.wiley.com/doi/full/10.1111/faf.12610>.

<sup>576</sup> These articles of the Convention require that in determining measures for the living resources, the coastal State (art. 61) or States fishing on the high seas (art. 119), respectively, shall take measures that are designed to maintain or restore populations of harvested species at levels that can produce the maximum sustainable yield, as qualified by, inter alia, the special requirements of developing States.

<sup>577</sup> A/RES/77/118, para. 10. The need for full implementation of the SIDS Accelerated Modalities of Action (SAMOA) Pathway (resolution 69/15, annex) was emphasized.

The General Assembly has also encouraged several other actions that fall generally within articles 24–26, relating to the special requirements of developing States.<sup>578</sup>

The 2023 Review Conference called for States to take concrete measures to enhance the ability of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries, consistent with articles 24 and 25 of the Agreement.<sup>579</sup> The outcomes also recommended actions to be taken in relation to the following:<sup>580</sup>

- Avoiding adverse impacts on, and ensuring the access to fisheries of, subsistence, small-scale and artisanal fishers and women fish workers, as well as Indigenous Peoples, in developing States
- Avoiding the transfer of a disproportionate burden of conservation action onto developing States, to further develop and implement, as a matter of urgency, the common understanding of the concept of “disproportionate burden,” including by better defining the concept, quantitatively and qualitatively, as envisaged in article 24, paragraph 2(c), of the Agreement

The criteria adopted by RFMO/As for performance reviews generally include, as part of international cooperation, the extent to which the RFMO/A recognizes the special needs of developing States and pursues forms of cooperation with developing States, including with respect to fishing allocations or opportunities, taking into account articles 24 and 25 of the Agreement.<sup>581</sup>

The practice in implementation of this article is closely related to the forms of cooperation in article 25, which addresses strengthening capacity and capacity-development mechanisms and programmes for developing States.

Concerning avoidance of adverse impacts on, and ensuring access to fisheries by subsistence, small-scale and artisanal fishers and women fishworkers, in addition to Indigenous Peoples in developing States, FAO has undertaken a wide range of activities to implement its Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication.<sup>582</sup>

### *Examples of RFMO/A practice*

#### *General*

The practice of RFMO/As has included the following:

- Taking measures designed to avoid adverse impacts on subsistence, small-scale and artisanal fishers and fishworkers and ensure their access to fisheries
- Modifying measures to support artisanal fishing<sup>583</sup>

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<sup>578</sup> A/RES/77/118, for example, para. 256, which calls upon States to promote further ratifications of or accessions to the Agreement by seeking to address, inter alia, the lack of capacity that might stand in the way of developing States becoming parties. See generally paras. 242–59 in relation to capacity-building.

<sup>579</sup> A/CONF.210/2023/6, annex, part D, para. 1.

<sup>580</sup> A/CONF.210/2023/6, annex, part D, paras. 5 and 6.

<sup>581</sup> M. Ceo and others, *Performance Reviews by Regional Fishery Bodies*.

<sup>582</sup> Available at <https://www.fao.org/voluntary-guidelines-small-scale-fisheries/en/>. These activities included leading the International Year of Artisanal Fisheries and Aquaculture in 2022 and supporting States in achieving and reporting on Sustainable Development Goal indicator 14.b.1.

<sup>583</sup> Including, for example, exempting artisanal fishing vessels from coastal developing States of a certain length from obligations under conservation and management measures.

- Actively promoting the inclusion and strengthening of small-scale and artisanal fishers and women fishworkers and taking concerted action to promote the sustainability of small-scale fisheries

### *Specific*

The South Pacific Regional Fisheries Management Organization Convention gives full recognition to the special requirements of developing States.<sup>584</sup> The Commission has established a fund to facilitate the effective participation of developing States in the work of the Commission and its subsidiary bodies. The financial regulations of the Commission<sup>585</sup> include guidelines for the administration of the fund and criteria for eligibility for assistance.

A Western and Central Pacific Fisheries Commission conservation and management measure on the special requirements of small island developing States and territories to develop their own domestic fisheries for highly migratory fish stocks elaborates, among others, areas for cooperation including capacity development of personnel; technology transfers; fisheries conservation and management; monitoring, control and surveillance; and support for the domestic fisheries sector and tuna fisheries-related businesses and market access.<sup>586</sup> Members, cooperating non-members and participating territories are required to report annually on the implementation of this measure.

### *Examples of State practice*

The practice of States has included the following:

- Providing access to fisheries in areas under national jurisdiction to traditional small-scale fishers through a memorandum of understanding concluded with a neighbouring developing country
- Scaling up support for community-based fisheries management and aquaculture assistance to enhance food security and nutrition and improve livelihoods in neighbouring developing small island countries
- Amending national legislation to provide priority and preferential use of fishing resources to small-scale fisheries
- Providing for the recognition of artisanal fishing in national legislation
- Encouraging rural development for subsistence fishers and along the value chain
- Reserving, by law, certain fishing quotas and exclusive operating areas for the artisanal sector, and certain coastal marine spaces for Indigenous Peoples.
- Concluding bilateral agreements with coastal States to avoid any interference by the long-distance fishing fleet with small-scale and artisanal fishing activities
- Directly supporting small-scale fishers, including by providing training, equipment and funding

Concerning the need to ensure that conservation and management measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States, several RFMO/As have reported that the need to avoid such transfer is embedded in their decision-making and conservation and management measures.

Other reported actions have included the following:

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<sup>584</sup> Art. 19; available at <https://www.sprfmo.int/assets/Basic-Documents/245f2e04de/Convention-web-12-Feb-2018.pdf>.

<sup>585</sup> Available at <https://www.sprfmo.int/assets/Basic-Documents/Financial-Regulations-2022-7Mar22-v2.pdf>, annex 1.

<sup>586</sup> WCPFC CMM 2013-07 on the Special Requirements of Small Island Developing States and Territories; available at <https://cmm.wcpfc.int/measure/cmm-2013-07>.

- Actively promoting the participative approach, the culture of ownership and the mitigation of any eventual burden from conservation actions within an RFMO/A, including through technical assistance
- Taking into account the socioeconomic impacts of fisheries in the establishment of multi-year plans for fisheries

Some considerations and methodologies for better defining the concept of “disproportionate burden” have been offered,<sup>587</sup> but, given the subjective nature of each evaluation, no definition has been formally developed at the time of writing.

### 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 24</b></p> <p style="text-align: center;"><b>RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES</b></p> <p><b>UNFSA</b></p> <p>1) Does your State do the following:</p> <p style="padding-left: 40px;">(a) Give full recognition to the special requirements of developing States in relation to conservation and management of, and development of fisheries for, straddling fish stocks and highly migratory fish stocks</p> <p style="padding-left: 40px;">(b) To this end, provide assistance to them either directly or through international and regional organizations and bodies (UNFSA, art. 24[1])</p> <p>2) Does your State, in cooperating to establish conservation and management measures for straddling fish stocks and highly migratory fish stocks, take into account the special requirements of developing States including those specified in article 24(2), which include inter alia:</p> <p style="padding-left: 40px;">(a) Vulnerability of developing States that are dependent on the exploitation of living marine resources</p> <p style="padding-left: 40px;">(b) Avoid adverse impacts on, and ensure access to fisheries by specified categories of persons<sup>588</sup></p> <p style="padding-left: 40px;">(c) Ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States? (UNFSA, art. 24[2])</p>
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<sup>587</sup> For example, for defining the term, see Kamal Azmi and others, “Defining a disproportionate burden in transboundary fisheries: Lessons from international law,” *Marine Policy*, vol. 70 (August 2016), pp. 164–73; available at <https://www.sciencedirect.com/science/article/abs/pii/S0308597X16302871>.

For methodologies, see “How to avoid disproportionate burdens in resource management? The case of tuna fisheries in the western and central Pacific – Information,” WCPFC19-2022-OP05, 9 November 2022; available at <https://meetings.wcpfc.int/node/18092>.

<sup>588</sup> Subsistence, small-scale and artisanal fishers and women fishworkers, as well as Indigenous people in developing States, particularly small island developing States.

## Supplementary

- 1) Does your State take concrete measures to enhance the ability of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries, consistent with articles 24 and 25 of the Agreement?  
(A/CONF.210/2016/5, annex, part D, para. 1)
- 2) Does your State contribute to the development of the understanding of “disproportionate burden,” including by better defining the concept quantitatively and qualitatively?  
(A/CONF.210/2023/6, annex, part D, para. 6)

## Article 25 - Forms of cooperation with developing States

### *Article 25 - Forms of cooperation with developing States*

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

*(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;*

*(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and*

*(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.*

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

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

*(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;*

*(b) stock assessment and scientific research; and*

*(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.*

## 1. Highlights



Provisions of the Agreement relating to the forms of cooperation with developing States are summarized below.

States must cooperate directly or through subregional, regional or global organizations to achieve the following:<sup>589</sup>

- (a) Enhance the ability of developing States<sup>590</sup> to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks
- (b) Assist developing States<sup>591</sup> to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11
- (c) Facilitate the participation of developing States in RFMO/As

Cooperation with developing States for the purposes in this article include provision of financial assistance; assistance relating to human resources development; technical assistance; transfer of technology, including through joint venture arrangements; and advisory and consultative services.<sup>592</sup>

Such assistance is to be directed specifically towards, inter alia:<sup>593</sup>

- (a) Improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information
- (b) Stock assessment and scientific research
- (c) Monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment

## 2. Implementation guidance and practice

Concerning the forms of cooperation in article 25, the General Assembly has called upon States to enhance or develop observer programmes,<sup>594</sup> combat IUU fishing<sup>595</sup> and develop more effective measures to trace fish and fishery products,<sup>596</sup> and has requested distant-water fishing nations to adopt certain approaches when negotiating access agreements and arrangements with developing coastal States,<sup>597</sup> in all cases taking into consideration such forms of cooperation.

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<sup>589</sup> Art. 25(1)(a)–(c).

<sup>590</sup> In particular the least-developed among them and small island developing States.

<sup>591</sup> In particular the least-developed among them and small island developing States.

<sup>592</sup> Art. 25(2).

<sup>593</sup> Art. 25(3)(a)–(c).

<sup>594</sup> A/RES/77/118, para. 25. For purposes of improving data collection on, inter alia, target and by-catch species, which could also assist monitoring, control and surveillance tools.

<sup>595</sup> A/RES/77/118, para. 122. Among others, it called for strengthening or establishing positive and negative lists of vessels fishing within areas covered by RFMO/As to promote compliance, and identify products from illegal, unreported and unregulated catches.

<sup>596</sup> A/RES/77/118, para. 127. For the purpose of enabling importing States to identify fish or fishery products caught in a manner that undermines international conservation and management measures. International bodies were also called upon to do so.

<sup>597</sup> A/RES/77/118, para. 253. Approaches include to negotiate on an equitable and sustainable basis; ensure that their flag vessels comply with the laws and regulations of the developing coastal States; give greater attention to fish processing and fish-processing facilities within the national jurisdiction of the developing coastal State; and transfer technology and assistance for monitoring, control and surveillance, and compliance and enforcement within areas under the national jurisdiction of the developing coastal State providing fisheries access.

The outcomes of the 2023 Review Conference included recommendations for several actions under each of the following matters:<sup>598</sup>

- Enhancing the participation of developing States in RFMO/As and in international and regional forums
- Strengthening the capacity of developing States<sup>599</sup>
- Strengthening of capacity-building mechanisms and programmes, including the Assistance Fund under part VII of the Agreement

The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs has been providing an ongoing programme of assistance to States and intergovernmental organizations in the field of oceans and the law of the sea since the adoption of the United Nations Convention on the Law of the Sea in 1982.<sup>600</sup> The programme includes technical cooperation, trust funds, fellowships, studies and guidelines, reference collections and databases, and advisory services.

The advisory services provide demand-driven and customized advice on issues related to the ratification of the Convention and related Agreements, their uniform and consistent application and effective implementation, as well as in ocean affairs and more generally.

FAO has provided legal assistance to several States for the implementation of the Agreement and other related international fisheries instruments, including for national policy and legislation development.

FAO launched the Global Capacity Development Programme<sup>601</sup> in 2017, which supports the implementation of international fisheries instruments and provides technical assistance and training to developing States. It also supports the development and implementation of related global information exchange tools. It includes assistance to developing States to implement the Port State Measures Agreement and complementary instruments and tools.<sup>602</sup>

As part of the 2022 WTO Agreement on Fisheries Subsidies, members endorsed the establishment of a new funding mechanism, in cooperation with relevant international organizations, to accept voluntary contributions to provide developing and least developed country members with targeted technical assistance and capacity-building for the purpose of implementing the disciplines under that Agreement.<sup>603</sup> There may be complementarities with the implementation of the United Nations Fish Stocks Agreement.

### *Examples of RFMO/A practice*

#### *General*

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<sup>598</sup> A/CONF.210/2023/6, annex, part D, paras. 2–4.

<sup>599</sup> Recommendations included, inter alia, identifying a wide range of areas for which capacity-building assistance should be provided. A/CONF.210/2023/6, annex, part D, para 3(b).

<sup>600</sup> The programme provides assistance to States in the uniform and consistent application of the Convention and related Agreements, as well as ocean affairs more broadly. Assistance is developed on a needs basis, working closely with beneficiaries and donors, as well as relevant intergovernmental organizations and development partners. Priority is given to developing States. Details are available at [www.un.org/oceancapacity](https://www.un.org/oceancapacity).

<sup>601</sup> Global Capacity Development Programme to support the implementation of the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated fishing (PSMA) and complementary international instruments, regional mechanisms and tools to combat illegal, unreported and unregulated (IUU) fishing; available at <https://www.fao.org/documents/card/en?details=cc4867en>.

<sup>602</sup> <https://www.fao.org/port-state-measures/capacity-development/overview/en/>.

<sup>603</sup> The Fund is operated by the WTO with partner organizations: the FAO, the World Bank Group, and the International Fund for Agricultural Development, to tap relevant expertise in a way that creates synergies and fills gaps, and avoids duplication. Once the start-up phase is completed, and subject to availability of funds, the Fund will be able to start accepting applications for assistance. Details are available at [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_fund\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_fund_e.htm).

The practice of RFMO/As has included the following:

- Providing support to developing States and cooperating with them to strengthen national and regional fisheries management
- Implementing a capacity-building programme to improve the compliance of developing States with its conservation and management measures
- Adopting criteria for allocation of fishing possibilities
- Mainstreaming strategies to assist developing States in participating in high seas fisheries
- Providing assistance, including through bilateral consultations, to strengthen the capacities of national research institutions, including for data collection, stock assessment and fisheries management
- Operating a voluntary special requirements fund used to support capacity-building for developing States' delegates
- Including capacity-building in almost all its projects and programmes
- Updating annually a strategic investment plan that targets investment to address priority needs as identified by developing States, including effective participation, and also sets out thematic capacity-development needs and funding sources, including an annual budget line for regional capacity-building workshops
- Providing financial assistance, human resource development, technical assistance and technology transfer to developing States bordering the RFMO/A area, as well as enabling their participation in its various committees
- Contributing to capacity-building in other regions by sharing its expertise and experience, both in direct cooperation and through FAO

### *Specific*

The Southern Indian Ocean Fisheries Agreement addresses the special requirements of developing States bordering the Convention Area<sup>604</sup> and provides for forms of cooperation including through financial assistance, human resource development, technical assistance, technology transfer, and activities directed specifically towards various objectives.<sup>605</sup>

At the fifteenth session of the Western and Central Pacific Fisheries Commission in 2018, the Commission directed the secretariat to develop a web page dedicated to the Implementation of Article 30 of the Convention on Requirements of Developing States.<sup>606</sup> It also approved the 2018 Strategic Investment Plan as a means to target investment to address the priority needs as identified by developing states, including effective participation. The Strategic Investment Plan has been updated annually since 2018<sup>607</sup> and, among others, sets out thematic capacity-development needs and funding sources.

### *Examples of State practice*

The practice of States has included the following:

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<sup>604</sup> Art. 13 – Special requirements of developing States; available at <https://siofa.org/sites/default/files/documents/SIOFA-Agreement-Digital-ENG.pdf>.

<sup>605</sup> The objectives include improved conservation and management of the fishery resources and straddling stocks; improved information collection and management of the impact of fishing activities on the marine environment; stock assessment and scientific research; monitoring, control and surveillance; and participation in the Meeting of the Parties and meetings of its subsidiary bodies as well as the settlement of disputes.

<sup>606</sup> Available at <https://www.wcpfc.int/implementation-article-30-convention>.

<sup>607</sup> Ibid.

- Providing support for developing States and cooperating with them to strengthen national and regional fisheries management
- Regularly providing capacity development to developing States through bilateral and multilateral arrangements to strengthen fisheries management
- Providing technical assistance to help build capacity for monitoring and surveillance
- Promoting ocean governance in developing States, including reinforcement of their scientific, administrative and technical capacity for fisheries management and control and regular funding of FAO capacity-building and technical assistance
- Supporting developing States in strengthening their fisheries management to deliver sustainable stocks and healthy marine ecosystems, provide inclusive livelihoods and reduce overfishing through a dedicated fund
- Concluding memoranda of understanding on capacity-building

### 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 25</b></p> <p style="text-align: center;"><b>FORMS OF COOPERATION WITH DEVELOPING STATES</b></p> <p><b>UNFSA</b></p> <p>1) Does your State cooperate through subregional, regional or global organizations to:</p> <p>(a) Enhance the ability of developing States to conserve and manage, and develop their own fisheries for straddling fish stocks and highly migratory fish stocks?</p> <p>(b) Assist developing States to enable them to participate in high seas fisheries for such stocks?</p> <p>(c) Facilitate the participation of developing States in RFMO/As? (UNFSA, art. 25[1][a]–[c])</p>
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### Article 26 - Special assistance in the implementation of this Agreement

<p style="text-align: center;"><i>Article 26 - Special assistance in the implementation of this Agreement</i></p> <p>1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.</p> <p>2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.</p>
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## 1. Highlights

Provisions of the Agreement relating to special assistance in the implementation of the Agreement are summarized below.

States must cooperate to establish special funds to assist developing States in the implementation of the Agreement, including assisting them to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

States and international organizations should assist developing States in establishing new RFMO/As or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

One of the forms of cooperation identified in article 25 is the provision of financial assistance. In this regard, in accordance with article 26 of the Agreement, States must cooperate to establish special funds to assist developing States in the implementation of the Agreement.

The General Assembly established the Assistance Fund under part VII of the Agreement (the "Assistance Fund") in 2003 at its fifty-eighth session to assist developing States parties in the implementation of the Agreement.<sup>608</sup>

To broaden ways of contribution, the terms of reference for the Assistance Fund were revised in 2019.<sup>609</sup> The revision allows for contributions through donor agreements for specific activities that meet any of the purposes of the Assistance Fund elaborated in paragraph 16 of the revised terms of reference.<sup>610</sup>

The revised terms of reference address two key requirements of this article:

- Supporting ongoing and future negotiations to establish new RFMO/As in areas where such bodies are not currently in place, to renegotiate founding agreements for such organizations and arrangements and to strengthen existing RFMO/As in accordance with the Agreement<sup>611</sup>
- Assistance in meeting costs for dispute settlement proceedings<sup>612</sup>

The Part VII Assistance Fund<sup>613</sup> is administered by FAO as the implementing office for the Fund, in collaboration with the United Nations Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, in accordance with the terms of reference and appropriate arrangements made between them.

Following the revision, the first project was launched in 2021, a three-year "Project of Assistance to Strengthen Participation in and Implementation of the UN Fish Stocks Agreement"<sup>614</sup> with the objective to strengthen participation in the Agreement and the effective implementation of its provisions.

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<sup>608</sup> By resolution 57/143 of 24 November 2003. Background available at [https://www.un.org/depts/los/convention\\_agreements/fishstocktrustfund/fishstocktrustfund.htm](https://www.un.org/depts/los/convention_agreements/fishstocktrustfund/fishstocktrustfund.htm).

<sup>609</sup> In the fourteenth round of Informal Consultations of States Parties to the Agreement.

<sup>610</sup> Current terms of reference are available at [https://www.un.org/Depts/los/convention\\_agreements/fishstocktrustfund/TOR.pdf](https://www.un.org/Depts/los/convention_agreements/fishstocktrustfund/TOR.pdf).

<sup>611</sup> Ibid., para. 16(c).

<sup>612</sup> Ibid., para. 16(h). This is complementary to any assistance provided under the ITLOS Trust Fund established by General Assembly resolution 55/7 or the Trust Fund for the International Court of Justice established by General Assembly resolution 47/444 or the Financial Assistance Fund established by the Permanent Court of Arbitration.

<sup>613</sup> The Financial Assistance Fund home page is at <https://www.un.org/oceancapacity/UNFSAfund>.

<sup>614</sup> The relevant donor agreement between the European Union and FAO was valued at \$1,127,599.

## 2. Implementation guidance and practice

The project was noted with appreciation by the General Assembly,<sup>615</sup> which also urged voluntary financial contributions to be made to the Assistance Fund.<sup>616</sup>

The 2023 Review Conference additionally called for urgent contributions to the Assistance Fund to allow for diversified use in accordance with its terms of reference and indicated areas to which assistance should be targeted.<sup>617</sup>

### *Examples of RFMO/A practice*

The practice of RFMO/As in establishing special funds to assist developing States in the implementation of the Agreement is generally reflected in their performance reviews, as described above. Otherwise, their practices have included the following:

- Earmarking funds within its budget for assistance to developing States, including for travel to meetings
- Establishing assistance funds under article 26
- Establishing a science capacity fund
- Establishing a capacity-building fund focused on, inter alia, improving data collection among developing State members and developing capacity in the implementation of management measures

### *Examples of State practice*

States report making assistance available through RFMO/As, including, as follows:

- Strengthening capacity-building mechanisms and programmes
- Providing financial, legal and operational support
- Providing assets to enhance developing country capacity for the protection and surveillance of their resources
- Supporting strategies and activities of RFMOs<sup>618</sup>

## 3. Implementation checklist

<div><div><div><div><div><div><b>IMPLEMENTATION CHECKLIST</b></div><div><b>ARTICLE 26</b></div><div><b>SPECIAL ASSISTANCE IN THE IMPLEMENTATION OF THIS AGREEMENT</b></div><div><b>UNFSA</b></div></div></div></div></div></div>
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<sup>615</sup> A/RES/77/118, para. 57.

<sup>616</sup> A/RES/77/118, para. 58. It urged contributions to be made by States, intergovernmental organizations, international financial institutions, national institutions and non-governmental organizations, as well as natural and juridical persons.

<sup>617</sup> It recommended that assistance should be targeted to such areas as: (i) stock assessment and scientific research; (ii) data collection and reporting; (iii) monitoring, control and surveillance; (iv) port State control; (v) compliance with market- and trade-related measures and meeting of market access requirements, including with respect to health and quality standards; (vi) development of fisheries for straddling fish stocks and highly migratory fish stocks; (vii) human resource development; (viii) sharing of information, including vessel information; (ix) flag State responsibility; and (x) settlement of disputes A/CONF.210/2023/6, annex, part D, para. 4(c).

<sup>618</sup> A/CONF.210/2023/1, para. 287.

- 1) Does your State cooperate to assist developing States in the implementation of this Agreement through the Assistance Fund established under part VII, or other available mechanisms such as those available through DOALOS, FAO or RFMO/As?

## PART VIII PEACEFUL SETTLEMENT OF DISPUTES

### Overview and background

Part VIII of the Agreement elaborates the actions and procedures required for the peaceful settlement of disputes, prevention of disputes and resolution of disputes of a technical nature. The provisions under the Convention for the settlement of disputes are applicable, including the limitation relating to sovereign rights, and provisional measures may be entered into pending dispute settlement.

### PART VIII

<b>Article 27</b>	<b>Obligation to settle disputes by peaceful means</b>
<b>Article 28</b>	<b>Prevention of disputes</b>
<b>Article 29</b>	<b>Disputes of a technical nature</b>
<b>Article 30</b>	<b>Procedures for the settlement of disputes</b>
<b>Article 31</b>	<b>Provisional measures</b>
<b>Article 32</b>	<b>Limitations on applicability of procedures for the settlement of disputes</b>

While providing for various possibilities of non-binding settlement, every dispute, with the consent of the Parties, can ultimately be submitted to a court or tribunal for a binding decision.

Initially, the Agreement obligates States to settle disputes by peaceful means of their own choice and requires cooperation for the prevention of disputes, similar to requirements in other international instruments including the United Nations Charter and the Convention.

It provides a process for disputes of a technical nature to be submitted to an ad hoc expert panel, a provision that also appears in the conventions of many RFMO/As.<sup>619</sup> The Convention more generally provides for scientific or technical experts to sit with the court or tribunal but without the right to vote.<sup>620</sup>

Pending the settlement of a dispute, the Convention provides that provisional measures may be prescribed by a court or tribunal, but the Agreement, in addition, requires Parties to make every effort to enter into provisional arrangements of a practical nature, without prejudice to the Convention.

Otherwise, the Agreement applies the provisions on the settlement of disputes in Part XV of the Convention, which include general provisions, compulsory procedures entailing binding decisions and limitations, and exceptions to the compulsory procedures.

<sup>619</sup> For example, art. 24(3) of the Convention establishing the South East Atlantic Fisheries Organisation, and art. 34(1) of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. A comprehensive report on RFMOs that provides for ad hoc panels in their constitutive instruments is included in Valentin J. Schatz, "Ad hoc expert panels: Regional fisheries management organisations (RFMOs)" (forthcoming); Ruiz Fabri, ed., *Max Planck Encyclopedia of International Procedural Law* (MPEiPro) (2022); available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4090520](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4090520).

<sup>620</sup> Art. 289 of the Convention.

The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to the Agreement concerning the interpretation or application of the Agreement or of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are Parties, whether or not they are also Parties to the Convention.<sup>621</sup>

In this way, the Convention establishes a framework, further elaborated by the Agreement, that promotes good order in the oceans and the effective management and conservation of high seas resources. No area of the high seas is left without being subject to the obligations in the Convention and Agreement. The duties to cooperate, to exchange information, to exercise restraint and to take into consideration all the matters specified in article 119 of the Convention, apply globally.

### Article 27 - Obligation to settle disputes by peaceful means

#### *Article 27 - Obligation to settle disputes by peaceful means*

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

### 1. Highlights

States have the obligation to settle their disputes by peaceful means of their own choice.

This type of provision is standard for international instruments.<sup>622</sup> It includes resort to regional agencies or arrangements, so relevant RFMO/As could play a role. The constitutive instrument of many RFMO/As has similar provisions, including dispute resolution procedures, but it would not necessarily be a prerequisite for agreeing to settle a dispute through this means providing the members of the RFMO/A agree.

### 3. Implementation checklist

#### IMPLEMENTATION CHECKLIST

#### ARTICLE 27

#### OBLIGATION TO SETTLE DISPUTES BY PEACEFUL MEANS

#### UNFSA

- 1) Has your State resolved any disputes relating to the implementation of the Agreement through peaceful means, as required under article 27? (UNFSA, art. 27)

<sup>621</sup> Art. 30, paras. (1) and (2) of the Agreement.

<sup>622</sup> A similar requirement is in art. 280 of the Convention: "Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice."



## Article 28 - Prevention of disputes

### *Article 28 - Prevention of disputes*

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

### 1. Highlights

States must cooperate in order to prevent disputes, and agree on or strengthen as necessary RFMO/A decision-making procedures.

The obligation for States to cooperate to prevent or avoid disputes is included in international practice and instruments.<sup>623</sup>

In this context, it is acknowledged that rules of procedure, including decision-making rules, are important to prevent States from undermining the conservation and management of the fish stocks.<sup>624</sup>

### 2 Implementation checklist

#### IMPLEMENTATION CHECKLIST

#### ARTICLE 28

#### PREVENTION OF DISPUTES

##### UNFSA

- 1) As applicable, does your State cooperate in order to prevent disputes, including by strengthening regional decision-making on the conservation and management of stocks? (UNFSA, art. 28)
- 2) Are the decision-making procedures of RFMO/As in which your State is member sufficiently efficient and expeditious to prevent disputes? (UNFSA, art. 28)

## Article 29 - Disputes of a technical nature

### *Article 29 - Disputes of a technical nature*

<sup>623</sup> For a review of dispute avoidance mechanisms in international environmental law, see Gerhard Loibl, *Dispute Avoidance and Dispute Settlement in International Environmental Law – Some Reflections on Recent Developments*; available at [https://www.oas.org/es/sla/ddi/docs/publicaciones\\_digital\\_XXIV\\_curso\\_derecho\\_internacional\\_1997\\_Gerhard\\_Loibl.pdf](https://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXIV_curso_derecho_internacional_1997_Gerhard_Loibl.pdf).

<sup>624</sup> A/CONF.210/2023/1, para. 185.

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

## **1. Highlights**

States may refer disputes of a technical nature to an ad hoc expert panel, which must endeavour to resolve the dispute expeditiously.

The use of ad hoc expert panels is a voluntary alternative to the compulsory dispute settlement mechanism in article 30 of the Agreement. The panels may be established between States directly or through RFMO/As, and compulsory procedures may be agreed. As noted above, a process for disputes of a technical nature to be submitted to an ad hoc expert panel appears in the conventions of several RFMO/As.

## **2. Implementation guidance and practice**

Some RFMO/As have incorporated expert review panels into their decision-making procedures in order to involve an independent third party in their system to review decisions and/or to recommend alternative or interim measures. Also, some RFMO/As use independent expert panels to validate the outputs of their technical bodies to mitigate possible disputes regarding the technical advice that underpins management decisions such as stock assessments and management procedures.

For example, some review panels have compulsory jurisdiction over disputes concerning objections by RFMO/A members based on the admissible grounds for objections or review; do not allow objections and instead give members the right to seek review of decisions by a review panel against the requirements of non-discrimination and compatibility with the legal framework; or have a mandate to make recommendations on necessary interim measures pending review of the decision by the RFMO/A itself, instead of to review a decision of the RFMO/A.<sup>625</sup>

It has been observed that the incorporation of review panel procedures in the decision-making procedures of RFMO/As can be a suitable alternative to any unfettered rights of members to opt out of measures that undermine the effectiveness of conservation and management by RFMOs.<sup>626</sup>

## **Article 30 - Procedures for the settlement of disputes**

### *Article 30 - Procedures for the settlement of disputes*

- 1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.*
- 2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to*

<sup>625</sup> Associated State practice is elaborated in Schatz, "Ad hoc expert panels."

<sup>626</sup> Schatz, "Ad hoc expert panels."

*straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.*

*3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.*

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

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

## **1. Highlights**

Provisions of the Agreement relating to procedures for the settlement of disputes are summarized below.

The provisions relating to the settlement of disputes set out in Part XV of the Convention apply to any dispute between States Parties to the Agreement concerning the interpretation or application of the Agreement, whether or not they are also Parties to the Convention.<sup>627</sup>

The provisions in Part XV of the Convention apply to any dispute between States Parties to this Agreement concerning the interpretation or application of an RFMO/A fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.<sup>628</sup>

Any procedure for dispute settlement accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention applies to dispute settlement under this Part, unless that State Party has accepted another procedure pursuant to article 287.<sup>629</sup>

A State Party to the Agreement, which is not a Party to the Convention, is free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1,

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<sup>627</sup> Art. 30(1).

<sup>628</sup> Art. 30(2).

<sup>629</sup> Art. 30(3). Art. 297 of the Convention relates to choice of procedure.

of the Convention for the settlement of disputes under this Part. Article 287 applies to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. Nominations of conciliators and arbitrators may take place according to stated procedures.<sup>630</sup>

Any court or tribunal to which a dispute has been submitted under this Part must apply the relevant provisions of the Convention, the Agreement and any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.<sup>631</sup>

The provisions relating to dispute settlement in Part XV of the Convention are incorporated into the Agreement. They make it possible to submit most disputes to compulsory dispute settlement at the request of any party to the dispute and establish recourse to four types of dispute settlement mechanisms.<sup>632</sup> Parties to the Convention can indicate a preference for any of these mechanisms. If the parties to a dispute have indicated the same preference, that mechanism will be applied. Otherwise, arbitration under annex VII of the Convention will be applied.

The provisions in the Agreement apply to disputes between States Parties to the Agreement whether or not they are also Parties to the Convention, where the dispute concerns the interpretation or application of the Agreement or of an RFMO/A fisheries agreement to which they are parties.

It is possible to submit most disputes to compulsory dispute settlement at the request of any party to the dispute; however, there are two limitations to this general rule.

First, a coastal State is not obliged to accept the submission to binding dispute settlement procedures of any dispute relating to its sovereign rights with respect to the living resources in the EEZ or their exercise.<sup>633</sup> If a coastal State invokes this provision, the possibility of compulsory dispute settlement in respect of aspects of a dispute related to the high seas is also limited.

Second, RFMO/As do not have legal standing<sup>634</sup> under Part XV of the Convention or Part VIII of the Agreement. The same applies to the dispute settlement procedures within the constitutive instruments of RFMOs, which would not be available to non-members in any case.

The Arbitral Tribunal in *Southern Bluefin Tuna*<sup>635</sup> held that the compulsory dispute settlement regime of the Convention could be excluded if the parties had agreed to other means for dispute settlement in a regional fisheries convention, notwithstanding the fact that the dispute settlement provision of the regional agreement did not contain a binding procedure.<sup>636</sup>

## Article 31 - Provisional measures

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<sup>630</sup> Art. 30(4).

<sup>631</sup> Art. 30(5).

<sup>632</sup> They are provided in art. 287 of the Convention and are the International Court of Justice, the International Tribunal for the Law of the Sea, arbitration under annex VII of the Convention and special arbitration under annex VIII of the Convention.

<sup>633</sup> Art. 297(3) of the Convention and art. 32 of the Agreement.

<sup>634</sup> Standing as the legal basis for individuals, entities or states to bring a claim or seek redress before international courts or tribunals. Standing refers to the legal interest or capacity that a party must have in order to initiate legal proceedings and be heard on a particular matter.

<sup>635</sup> *Southern Bluefin Tuna*, 39 ILM 1359 (2000).

<sup>636</sup> A full discussion of this case is at Jacqueline Peel, "A paper umbrella which dissolves in the rain? The future for resolving fisheries disputes under the Convention in the aftermath of the Southern Bluefin Tuna Arbitration," *Melbourne Journal of International Law*, vol. 3 (2002); available at [https://law.unimelb.edu.au/data/assets/pdf\\_file/0008/1680236/Peel.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0008/1680236/Peel.pdf).

### Article 31 - Provisional measures

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

### 1. Highlights

Provisions of the Agreement relating to procedures for the settlement of disputes are summarized below.

Pending the settlement of a dispute in accordance with this part, the parties to the dispute must make every effort to enter into provisional arrangements of a practical nature.<sup>637</sup>

The court or tribunal to which the dispute has been submitted may prescribe any provisional measures<sup>638</sup> that it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in articles 7(5)<sup>639</sup> and 16(2).<sup>640</sup>

A State Party to this Agreement which is not a Party to the Convention may declare that the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.<sup>641</sup>

Provisional measures prescribed by the International Tribunal for the Law of the Sea (ITLOS) in the *Southern Bluefin Tuna Cases*<sup>642</sup> and the *Swordfish Case* (Chile/European Union)<sup>643</sup> may be consulted as examples of practice.<sup>644</sup>

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<sup>637</sup> Art. 31(1).

<sup>638</sup> This is stated to be without prejudice to art. 290 of the Convention, which relates to provisional measures.

<sup>639</sup> States concerned must make every effort to enter into provisional arrangements of a practical nature pending agreement on compatible conservation and management measures.

<sup>640</sup> Art. 31(2). States must make every effort to agree on provisional arrangements and measures in areas of high seas surrounded entirely by an area under the national jurisdiction of a single State.

<sup>641</sup> Art. 31(3). Notwithstanding art. 290, para. 5, of the Convention.

<sup>642</sup> Southern Bluefin Tuna Cases (*New Zealand v. Japan, Australia v. Japan*), Cases Nos. 3–4, Order of 27 August 1999; available at <https://www.itlos.org/en/main/cases/list-of-cases/case-no-3-4/>.

<sup>643</sup> Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean (Chile/ European Community), Case 7, <https://www.itlos.org/en/main/cases/list-of-cases/case-no-7/>.

<sup>644</sup> They are reviewed by Luke DeTore in “Environment vs. economy: Influence in international fishing disputes”; available at <https://sites.bu.edu/pardeeatlas/advancing-human-progress-initiative/back2school/environment-vs-economy-influence-in-international-fishing-disputes/>.

It has been argued that the plausibility of certain rights inherent to the ITLOS process is necessary for prescribing provisional measures, and the parties must not only demonstrate the right but likelihood of its success on the merits.<sup>645</sup>

## **Article 32 - Limitations on applicability of procedures for the settlement of disputes**

*Article 32 - Limitations on applicability of procedures for the settlement of disputes*

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

### **1. Highlights**

Provisions of article 297(3) of the Convention relating to Limitations on applicability of procedures for the settlement of disputes applies to the Agreement and are summarized below.

A coastal State is not obliged to accept the submission to a settlement of any dispute under section 2 of Part XV relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.<sup>646</sup>

Where no settlement has been reached by recourse to section 1 of Part XV, other procedures and responsibilities, including conciliation are provided.<sup>647</sup>

As noted above, article 30 of the Agreement provides for the choice and application of procedures for the settlement of disputes pursuant to article 287 of the Convention to disputes arising under the Agreement. This article also applies article 297(3) of the Convention, which in turn relates to article 287, and provides circumstances where coastal States are not obligated to accept the submission to settlement of disputes.

In a recent case where the limitation was invoked under the Convention, it was observed by the Permanent Court of Arbitration that conditions for its application had not been met because the exclusive economic zone concerned was in dispute between the parties.<sup>648</sup>

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

### **Overview and background**

This Part IX of the Agreement contains one article on non-parties to the Agreement.

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<sup>645</sup> Gustavo Leite Neves da Luz, "Standard of plausibility in provisional measures prescribed by the International Tribunal for the Law of the Sea," *KMI International Journal of Maritime Affairs and Fisheries*, vol. 14, No. 2 (December 2022), pp. 115–32; available at <https://doi.org/10.54007/ijmaf.2022.14.2.115>.

<sup>646</sup> Art. 297(3)(a) of the Convention.

<sup>647</sup> Art. 287(3)(b)–(e).

<sup>648</sup> In a case involving Ukraine's claims concerning interference by Russia with its fisheries in the EEZ, this article was subject to review by the Permanent Court of Arbitration in the dispute concerning coastal State rights in the Black Sea, Sea of Azov and Kerch Strait (*Ukraine v. Russia*), PCA Case No. 2017–06. It is reviewed by Robin Churchill, "Dispute settlement in the law of the sea: Survey for 2020," *The International Journal of Marine and Coastal Law*, Online Publication Date: 14 June 2021; available at [https://brill.com/view/journals/estu/36/4/article-p539\\_2.xml](https://brill.com/view/journals/estu/36/4/article-p539_2.xml).

## PART IX

### Article 33

### Non-parties to this Agreement

It was seen as vitally important that all Parties to the Convention become Parties to the Agreement so that, as originally intended, there would be a seamless connection between the provisions of both. The need for this had been emphasized repeatedly in numerous resolutions of the General Assembly<sup>649</sup> and other international bodies.

In requiring States Parties to take measures to deter the activities of flag vessels of non-parties that undermine the effective implementation of the Agreement, this article is consistent with article 17(3), which requires States that are members of an RFMO/A to request non-members (and non-parties to the Agreement) to comply with the conservation and management measures adopted by the RFMO; and article 17(4), which directs States Parties to take measures consistent with the Agreement and international law to deter non-parties from undermining the effectiveness of conservation and management measures adopted by an RFMO/A.

### Article 33 - Non-parties to this Agreement

#### *Article 33 - Non-parties to this Agreement*

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

### 1. Highlights

The provisions of article 33 on non-parties to the Agreement are summarized below.

States Parties must encourage non-parties to the Agreement to become parties and to adopt laws and regulations consistent with its provisions.<sup>650</sup>

States Parties must take measures consistent with the Agreement and international law to deter the activities of flag vessels of non-parties that undermine the effective implementation of the Agreement.<sup>651</sup>

The constitutive instruments of many RFMOs incorporate the requirement to deter the activities of flag vessels of non-Parties that undermine the effective implementation of the Agreement.

The sort of measures that might be invoked in this regard include, inter alia, trade and market-related measures, such as catch documentation schemes, as well as port State measures. Direct

<sup>649</sup> For example, A/RES/58/14, para. 4; A/RES/58/240, para. 1.

<sup>650</sup> Art. 33(1).

<sup>651</sup> Art. 33(2).

demands to flag States to remove their vessels from the region might also be used if violation of conservation and management measures can be established.<sup>652</sup>

## 2. Implementation guidance and practice

The 2023 Review Conference called for promotion of wider participation in the Agreement, including by calling upon relevant States to become parties to the Agreement, disseminating information concerning the Agreement,<sup>653</sup> identifying problems hindering further ratifications or accessions to the Agreement, and strengthening dialogue with non-parties with a view to broadening participation.<sup>654</sup>

### *Examples of RFMO/A practice*

Some measures taken by RFMO/As to raise awareness and attract the participation of non-party developing States in their work include the following:

- Providing assistance in strengthening national and regional regulatory fisheries policies
- Inviting non-members to observe meetings
- Inviting non-members to join as members
- Promoting dialogue with non-members
- Disseminating information relevant to the Agreement, including through their websites
- Promoting the Agreement by active participation in the Review Conference and in the Informal Consultations of States Parties to the Agreement

### *Examples of State practice*

Some measures reported by States to encourage others to become parties to the Agreement include using bilateral or multilateral channels, including through RFMO/As.

## 3. Implementation checklist

<p style="text-align: center;"><b>IMPLEMENTATION CHECKLIST</b></p> <p style="text-align: center;"><b>ARTICLE 33</b></p> <p style="text-align: center;"><b>NON-PARTIES TO THIS AGREEMENT</b></p> <p><b>UNFSA</b></p> <p>1) Does your State take action to encourage other States to become Parties to the Agreement and adopt relevant implementing legislation, including by disseminating information, identifying problems hindering further ratifications or accessions and strengthening dialogue with non-parties? (UNFSA, art. 33[1])</p>
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<sup>652</sup> Lodge and Nandan, "Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995." For similar provisions in other instruments, see "Non-party provisions in international agreements," <https://legalresponse.org/legaladvice/non-party/>.

<sup>653</sup> Including its objective and the rights that it bestows and the duties that it imposes, as well as potential benefits arising from becoming a party to the Agreement, as well as information on the Assistance Fund.

<sup>654</sup> A/CONF.210/2023/6, annex, part E, para. 1.



- 2) Does your State, directly or through RFMO/As, take measures consistent with the Agreement and international law to deter the activities of flag vessels of non-parties that undermine the effective implementation of the Agreement? (UNFSA, art. 33[2])

## PART X GOOD FAITH AND ABUSE OF RIGHTS

### Overview and background

Part X of the Agreement has one article on good faith and abuse of rights.

#### PART X

##### Article 34 Good faith and abuse of rights

A basic duty in the Agreement, which applies to all flag States, whether or not they are members of the relevant RFMO/A, is to ensure that high seas fishing vessels do not undermine the effectiveness of internationally agreed conservation and management measures. Flag States are required to take several actions to exercise control over their vessels,<sup>655</sup> and the power is given to Parties to board and inspect vessels on the high seas in accordance with associated procedures.

The power to board and inspect foreign vessels on the high seas is circumscribed by safeguards designed to preserve at all times the right of the flag State to assert its primary jurisdiction, and to ensure good faith and prevent abuse.

This is a standard provision in international instruments and is similar to Article 300 of the Convention on good faith and abuse of rights.

#### Article 34 - Good faith and abuse of rights

##### *Article 34 - Good faith and abuse of rights*

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

### 1. Highlights

Article 34 on good faith and abuse of rights provides that States Parties must fulfil in good faith the obligations assumed under the Agreement and exercise the rights recognized in the Agreement in a manner that would not constitute an abuse of rights.

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<sup>655</sup> For example, prohibiting flag vessels from fishing on the high seas without a specific licence (which the flag State may only issue if it is able effectively to exercise its responsibility over the vessel), maintaining records of all vessels authorized to fish, using satellite monitoring systems to track the vessels' activities, collect and report basic fishing data and cooperate with other states in implementing regional inspection schemes.

In the context of the Agreement, concerns were initially expressed<sup>656</sup> that the authority to board and inspect high seas fishing vessels could be abused, for example to interfere with the legitimate fishing activities of a competing fishing fleet. However, there has been no general international consideration and recommendations relating to such practices with respect to the Agreement in recent years.

## PART XI RESPONSIBILITY AND LIABILITY

### Overview and background

Part XI of the Agreement has one article on responsibility and liability.

PART XI	
Article 35	Responsibility and liability

This is a standard provision in international law and is similar in part to the provisions in article 235 of the Convention on responsibility and liability. That article declares, inter alia, that States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment and shall be liable in accordance with international law.

### Article 35 - Responsibility and liability

<p style="text-align: center;"><i>Article 35 - Responsibility and liability</i></p> <p><i>States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.</i></p>
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#### 1. Highlights

Article 35 on responsibility and liability provides the following:

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

A written statement submitted by the Secretary-General to the International Tribunal for the Law of the Sea noted that the Agreement does not explicitly address the issue of the possible liability of a State for illegal, unreported and unregulated fishing activities conducted by vessels flying its flag. However, regarding the general issue of liability, the Agreement provides that States Parties are liable

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<sup>656</sup> Balton and Koehler, "Reviewing the United Nations Fish Stocks Treaty." They were also reported to be expressed at the fifth round of the Informal Consultations of States Parties; <https://enb.iisd.org/events/un-fish-stocks-agreement-review-conference/curtain-raiser>.

in accordance with international law for damage or loss attributable to them in regard to the Agreement.<sup>657</sup>

## PART XII REVIEW CONFERENCE

### Overview and background

Part XII of the Agreement has one article on the Review Conference.

PART XII	
Article 36	Review conference

Concerning the review and assessment of the effectiveness of the implementation of the Agreement, the Convention<sup>658</sup> requires the Secretary General, in addition to his functions as depositary, to convene necessary meetings of States Parties. However, it has been suggested that because of the close link between the Agreement and the Convention, it was not considered necessary to prescribe the duties of the depositary in as much detail.<sup>659</sup>

The focus of the Agreement is more specific, and requires the Secretary-General to convene a review conference specifically for such review and assessment.

### Article 36 - Review conference

<p style="text-align: center;"><i>Article 36 - Review conference</i></p> <p><i>1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.</i></p> <p><i>2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.</i></p>
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<sup>657</sup> Written Statement of the United Nations, Case No. 21, Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC). Written statement submitted to the International Tribunal for the Law of the Sea by the Secretary-General of the United Nations, para. 18; available at [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.21/written\\_statements\\_round1/C21\\_Written\\_Statement\\_1\\_UN.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/written_statements_round1/C21_Written_Statement_1_UN.pdf). The Tribunal noted that “neither the Convention nor the MCA Convention provides guidance on the issue of liability of the flag State for IUU fishing activities conducted by vessels under its flag” (para. 142, MCA Convention is the regional treaty concluded by seven member States of the West African Sub-Regional Fisheries Commission). The full documentation for the advisory opinion is at <https://www.itlos.org/index.php?id=252>.

<sup>658</sup> Art. 319(2)(e).

<sup>659</sup> Lodge and Nandan, “Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995.”

## 1. Highlights

Article 36 on a Review Conference is summarized below.

Four years after the entry into force of the Agreement, the Secretary-General must convene a conference with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.<sup>660</sup>

The Secretary-General must invite all States Parties and those States and entities which are entitled to become parties to the Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.<sup>661</sup>

The conference must 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 in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.<sup>662</sup>

Mindful that the Review Conference was required to be convened only four years after entry into force of the Agreement, and of the need for continuing informal consultations, the General Assembly recommended in 2001 that annual informal consultations be held for the purposes, inter alia, of 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, which would be convened in 2006.<sup>663</sup>

In 2005, a publication by authoritative sources<sup>664</sup> captured concerns in the lead-up to the Review Conference by proposing, for the purpose of supporting the goal of better implementation of the Agreement, that the Review Conference consider the establishment of a regular review process, to take place every four years.<sup>665</sup>

The report of the 2006 Review Conference records that most delegations stressed the need to continue the review of the effectiveness of the Agreement.<sup>666</sup> The President 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.<sup>667</sup>

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<sup>660</sup> Art. 36(1).

<sup>661</sup> Art. 36(1).

<sup>662</sup> Art. 36(2).

<sup>663</sup> A/RES/56/13, para. 6. The resolution was expressly anticipating the entry into force of the Agreement. The first Informal Consultation of States Parties was held in 2002, and the fifth consultation held in 2006 preceded and prepared for the first Review Conference in 2006. More recently, the 2016 Review Conference recommended that the informal consultations be dedicated, on an annual basis, to the consideration of specific issues arising from the implementation of the Agreement, with a view to improving understanding, sharing experiences and identifying best practices for the consideration of States parties, as well as the General Assembly and the Review Conference.

<sup>664</sup> Lodge and Nandan, "Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995." Ambassador Nandan had served as President of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

<sup>665</sup> The authors proposed certain items to be included in the regular review process, to be supported by technical reporting from FAO and relevant international organizations. They addressed RFMO performance reviews, systematic review of conservation and management measures for their effectiveness and consistency with the Agreement, achieving greater harmony and consistency among RFMOs and setting goals and targets for the implementation of part VII of the Agreement and a review of progress.

<sup>666</sup> A/CONF.210/2006/15, para. 129. However, there was a divergence of views on the frequency and format of such reviews.

<sup>667</sup> *Ibid.*, para. 135.

The Conference approved the President's proposal to change agenda item 13 from "Closure of the Conference" to "Suspension of the Conference."<sup>668</sup>

The Review Conference was subsequently resumed in 2010, 2016 and 2023, and the General Assembly has encouraged wide participation in the Conference.<sup>669</sup> While the Review Conference in 2006 focused directly on the implementation of the Agreement, subsequent resumptions have reviewed the implementation of the recommendations previously adopted by the Review Conference.

The Secretary-General's reports to the Review Conference reflect responses from States and RFMO/As to voluntary questionnaires concerning their activities to implement the Agreement and the recommendations emanating from the Review Conference, and reports by FAO on the status of the straddling fish stocks and highly migratory fish stocks. The reports of the Review Conference include an annex containing the outcomes of the Conference, consisting of recommendations of the Conference.

All relevant information, including the reports of the Secretary-General, FAO, the Informal Consultations of States Parties to the Agreement and the report of each Review Conference, is available online.<sup>670</sup>

## 2. Implementation checklist

### IMPLEMENTATION CHECKLIST

#### ARTICLE 36

#### REVIEW CONFERENCE

#### UNFSA

- 1) Mindful that the General Assembly encourages wide participation in the resumed Review Conference, does your State participate in the Review Conference to assess the adequacy of the Agreement, report on implementation through the voluntary questionnaires coordinated by DOALOS and, if necessary, propose means of strengthening the substance and methods of implementation? (A/RES/77/118, para. 65)

## PART XIII FINAL PROVISIONS

### Overview and background

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<sup>668</sup> Ibid., para. 134. As a result of the discussions held at the fifth Informal Consultation of States Parties (ICSP), the Review Conference adopted a process to review and assess the adequacy of the provisions of the Agreement and to propose means to strengthen their implementation. To facilitate this process, the fifth ICSP organized the assessment into four general cluster areas, each based on the parts of the UNFSA: (1) Conservation and management of stocks; (2) Mechanisms for international cooperation; (3) Monitoring, control and surveillance, compliance and enforcement; and (4) Developing States parties and non-parties. See Balton and Koehler, "Reviewing the United Nations Fish Stocks Treaty."

Agendas of the resumed Review Conference reflect this cluster.

<sup>669</sup> A/RES/77/118, para. 65.

<sup>670</sup> Available at [https://www.un.org/depts/los/convention\\_agreements/review\\_conf\\_fish\\_stocks.htm](https://www.un.org/depts/los/convention_agreements/review_conf_fish_stocks.htm).

Part XIII of the Agreement has 14 articles covering areas that are generally accepted as standard final provisions for treaties.

## PART XII

Article 37	Signature
Article 38	Ratification
Article 39	Accession
Article 40	Entry into force
Article 41	Provisional application
Article 42	Reservations and exceptions
Article 43	Declarations and statements
Article 44	Relation to other agreements
Article 45	Amendment
Article 46	Denunciation
Article 47	Participation by international organizations
Article 48	Annexes
Article 49	Depositary
Article 50	Authentic texts

Discussion of Part XIII was first recorded at the fifth of the six sessions of the Conference in 1995.<sup>671</sup> Standard topics were agreed in line with State practice,<sup>672</sup> but with requirements particular to the Agreement.

Entry into force has occurred in accordance with article 40, and the requirements set for signature, ratification and accession (articles 37, 38 and 39)<sup>673</sup> require no further elaboration. Similarly, provisions in relation to denunciation (article 46), the depositary (article 49) and authentic texts (article 50) do not require additional explanations.

However, some substantive issues may be involved in the implementation of the remaining articles in this Part, as explained below.

The articles on provisional application (article 41) and participation by international organizations (article 47) were agreed only in the final stages of the negotiation of this part and may reflect the will of the international community to encourage early and broad-based implementation.

### Article 41 - Provisional application

#### *Article 41 - Provisional application*

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

<sup>671</sup> A/CONF.164/29, 18 May 1995; available at

[https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/n9514981\\_aconf16429.pdf](https://www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/files/Projects/UNFSA/docs/n9514981_aconf16429.pdf).

<sup>672</sup> For example, as provided in the Vienna Convention on the Law of Treaties, 1969, or part XVII of the Convention.

<sup>673</sup> Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements are available at [https://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#Agreement%20for%20the%20implementation%20of%20the%20provisions%20of%20the%20Convention%20of%2010%20December%201982%20relating%20to%20the%20conservation%20and%20management%20of%20straddling%20fish%20stocks%20and%20highly%20migratory%20fish%20stocks](https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement%20for%20the%20implementation%20of%20the%20provisions%20of%20the%20Convention%20of%2010%20December%201982%20relating%20to%20the%20conservation%20and%20management%20of%20straddling%20fish%20stocks%20and%20highly%20migratory%20fish%20stocks).

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

## **1. Highlights**

Section 41 on provisional application is summarized below.

The Agreement shall be applied provisionally by a State or entity that consents to its application by notifying the depositary in writing, effective from the date of receipt of the notification.<sup>674</sup>

Termination of provisional application will take place upon the entry into force of the Agreement for that State or entity or upon the notification of its intention to terminate to the depositary.<sup>675</sup>

While awaiting the entry into force of the Agreement, the United Nations General Assembly called repeatedly on States and other entities referred to in article 1(2)(b) of the Agreement to ratify or accede to it and to consider applying it provisionally while awaiting the Agreement's entry into force.<sup>676</sup>

## **Article 42 - Reservations and exceptions**

### *Article 42 - Reservations and exceptions*

*No reservations or exceptions may be made to this Agreement.*

## **1. Highlights**

Section 42 on reservations and exceptions provides that no reservations or exceptions may be made to the Agreement.

## **Article 43 - Declarations and statements**

### *Article 43 - Declarations and statements*

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

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<sup>674</sup> Art. 41(1).

<sup>675</sup> Art. 41(2).

<sup>676</sup> For example, in A/RES/50/24 (22 December 1995); A/RES/51/35 (17 January 1997); A/RES/52/28 (26 January 1998); and A/RES/54/31 (24 November 1999).

## 1. Highlights

States or entities are not precluded from making declarations or statements when signing, ratifying or acceding to the Agreement under certain conditions.

Section 43 on Declarations and statements provides the following:

States or entities are not precluded from making declarations or statements when signing, ratifying or acceding to the Agreement, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of the Agreement.

The declarations or statements must not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Several declarations have been made under this article.<sup>677</sup>

### Article 44 - Relation to other agreements

#### *Article 44 - Relation to other agreements*

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

## 1. Highlights

The Agreement shall not alter the rights and obligations of States Parties arising from other compatible agreements, and conditions are set for agreements they may conclude that modify or suspend the operation of provisions of the Agreement.

Article 44 on relation to other agreements provides the following:

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

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<sup>677</sup> A list of declarations is available at [https://www.un.org/depts/los/convention\\_agreements/fish\\_stocks\\_agreement\\_declarations.htm](https://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_declarations.htm).



other States Parties of their rights or the performance of their obligations under this Agreement.<sup>678</sup>

Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of the Agreement, applicable solely to the relations between them, provided that such agreements do not do the following:

- Relate to a provision derogation that is incompatible with the effective execution of the object and purpose of the Agreement
- Affect the application of the basic principles embodied in the Agreement
- Affect the enjoyment by other States parties of their rights or the performance of their obligations under the Agreement<sup>679</sup>

States Parties intending to conclude such an agreement shall notify the other States Parties through the depositary of the Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.<sup>680</sup>

This provision is very similar to article 311 of the Convention.

#### Article 45 - Amendment

##### *Article 45 - Amendment*

- 1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.*
- 2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.*
- 3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.*
- 4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.*
- 5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.*

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<sup>678</sup> Art. 44(1).

<sup>679</sup> Art. 44(2).

<sup>680</sup> Art. 44(3).

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

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

*(a) be considered as a Party to this Agreement as so amended; and*

*(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.*

## **1. Highlights**

Article 45 sets a comprehensive process for proposing and adopting amendments to the Agreement as summarized below.

A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to the Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General must circulate the communication to all States Parties, and if, within six months from the date of circulation, not less than one half of the States Parties reply favourably, the Secretary-General must convene the conference.<sup>681</sup>

The decision-making procedure applicable at the amendment conference must be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus, and there should be no voting on them until all efforts at consensus have been exhausted.<sup>682</sup>

Once adopted, amendments to the Agreement must be open for signature at United Nations Headquarters by States Parties for 12 months from the date of adoption, unless otherwise provided in the amendment.<sup>683</sup>

Articles 38, 39, 47 and 50 apply to all amendments to the Agreement.<sup>684</sup>

Amendments to the Agreement enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two-thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment enters into force on the thirtieth day following the deposit of its instrument of ratification or accession.<sup>685</sup>

An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.<sup>686</sup>

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<sup>681</sup> Art. 45(1).

<sup>682</sup> Art. 45(2).

<sup>683</sup> Art. 45(3).

<sup>684</sup> Art. 45(4).

<sup>685</sup> Art. 45(5).

<sup>686</sup> Art. 45(6).

A State that becomes a Party to the Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State: (a) be considered as a Party to the Agreement as so amended; and (b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.<sup>687</sup>

No amendments to the Agreement had been proposed at the time of writing.

#### **Article 47 - Participation by international organizations**

##### *Article 47 - Participation by international organizations*

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

*(a) article 2, first sentence; and*

*(b) article 3, paragraph 1.*

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

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

*(i) that it has competence over all the matters governed by this Agreement;*

*(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and*

*(iii) that it accepts the rights and obligations of States under this Agreement;*

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

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

#### **1. Highlights**

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<sup>687</sup> Art. 45(7).

Requirements for participation by international organizations referred to in annex IX, article 1 of the Convention<sup>688</sup> are provided in cases where they do or do not have competence over all the matters governed by the Agreement.

Article 47 on participation by international organizations is summarized below.

Where an international organization referred to in annex IX, article 1, of the Convention does not have competence over all the matters governed by the Agreement, annex IX shall apply *mutatis mutandis* to its participation in the Agreement, with two exceptions.<sup>689</sup>

Where an international organization referred to in annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to its participation in this Agreement:

- (a) At the time of signature or accession, it must make a declaration stating the following:
  - (i) It has competence over all the matters governed by the Agreement.
  - (ii) For this reason, its member States shall not become States Parties, except with respect to their territories for which the international organization has no responsibility.
  - (iii) It accepts the rights and obligations of States under the Agreement.
- (b) Participation shall in no case confer any rights under this Agreement on member States of the international organization.
- (c) In the event a conflict between the obligations of an international organization under the Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under the Agreement shall prevail.<sup>690</sup>

The declarations made pursuant to article 47 are available at the United Nations Treaty Collection.<sup>691</sup>

## Article 48 - Annexes

### *Article 48 - Annexes*

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

*2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in*

<sup>688</sup> Annex IX, Participation by international organizations, defines “international organization” as “an intergovernmental organization constituted by States to which its member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of those matters.”

<sup>689</sup> Art. 47(1), which also provides the exceptions that do not apply: Art. 2, first sentence: “An international organization may sign this Convention if a majority of its member States are signatories of this Convention”; and Article 3, paragraph 1: “An international organization may deposit its instrument of formal confirmation or of accession if a majority of its member States deposit or have deposited their instruments of ratification or accession.”

<sup>690</sup> Art. 47(2).

<sup>691</sup> Declarations have been made by the European Union, France, Ireland, Latvia, the Netherlands and Slovakia, and are available at [https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-7&chapter=21&clang=en#EndDec](https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-7&chapter=21&clang=en#EndDec).

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

## 1. Highlights

The annexes form an integral part of the Agreement and may be revised from time to time by States Parties in accordance with specified considerations and procedures.

The Agreement contains two annexes:

- Annex I: Standard Requirements for the Collection and Sharing of Data
- Annex II: Guidelines for the Application of Precautionary Reference Points in Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Article 48 on annexes is summarized below.

The annexes form an integral part of the Agreement. Unless expressly provided otherwise, a reference to the Agreement or to one of its Parts includes a reference to the relevant annexes.<sup>692</sup>

The annexes may be revised from time to time by States Parties, and revisions must be based on scientific and technical considerations. Notwithstanding the provisions of article 45 on amendments, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in the Agreement and takes effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.<sup>693</sup>

Article 48(1) is similar to article 318 of the Convention, but in addition a special amendment procedure is provided.

## V. IMPLEMENTATION GUIDE – SUMMARY CONCLUSIONS

This Guide seeks to facilitate the full and effective implementation of the Agreement by furthering the understanding and awareness by States, RFMO/As and the international community of its provisions as well as the recommendations of the Review Conference. Vital synergies with broader international processes and agreements are elaborated, such as General Assembly resolutions and international instruments including those related to marine resources, oceans, environment, climate, enforcement and international trade.

The Guide provides comprehensive legal, scientific and technical background necessary for understanding the evolving developments and challenges affecting the relevant fisheries resources at many levels, including national, subregional, regional and international. It also provides references for further understanding and strengthening of human, institutional and financial capacity to achieve the objective of the Agreement.

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<sup>692</sup> Art. 48(1).

<sup>693</sup> Art. 48(2).

The Guide serves as an important resource for States Parties and those that are considering becoming parties to UNFSA. It describes and elaborates the provisions of the Agreement by drawing on its historical context, relevant guidance (such as the recommendations of the Review Conference, the outcomes of the Informal Consultations of States Parties, FAO and regional fisheries management organization [RFMO] instruments) and relevant examples of international practice, and State practice at the regional level through RFMOs and at the national level.

The negotiation and development of the Agreement involved bringing together diverse interests in a climate of challenges to the sustainability of straddling fish stocks and highly migratory fish stocks. Although a wide range of actions and measures have been taken to date under the Agreement to implement the Agreement and address the challenges, as described in this Guide, there are continuing and new challenges, and the status of the fish stocks needs significant improvement.

This can be achieved by strengthening the implementation of the Agreement by States Parties and RFMO/As and by the accession of additional Parties, facilitated as needed by this Guide.

The benefits of strengthened and expanded implementation would improve and amplify the progress made since the adoption of the Agreement, including through the extensive international and regional processes described in this Guide. Progress has included improving management by coastal States of their resources, combatting IUU fishing, supporting cooperation among States, promoting coordination among RFMO/As and successfully managing specific stocks. The Agreement is a “living document,” which provides a firm foundation for taking action in relation to evolving governance, science, laws, management, technologies, data information and, most important, the status of the fisheries resources.

However, strengthened implementation of the Agreement is also essential to address ongoing critical challenges that threaten the fish stocks – and consequently humanity – globally. They include overfishing, overcapacity, and the need to preserve deep-sea ecosystems, pollution, climate change and biodiversity loss. The overall status of the straddling fish stocks and highly migratory fish stocks, as reported by FAO to the Review Conference, suggests that there is a pressing need to meet all such challenges.

The Agreement offers several tools that can address such challenges, including the ecosystem and precautionary approaches, duties of flag States, compliance and enforcement requirements and regional cooperation. Strengthened implementation would put improvement of the overall status of the fish stocks in reach. This in turn would offer benefits such as food security, economic well-being, and biodiversity and fulfil the objective of the Agreement to ensure the long-term conservation and sustainable use of the stocks through effective implementation of the relevant provisions of the Convention.

## **ANNEX 1: FRAMEWORK OF PROVISIONS IN THE CHAIRMAN'S DRAFT NEGOTIATING TEXT AND SIGNIFICANT PROVISIONS ADDED DURING THE CONFERENCE<sup>694</sup>**

### **FRAMEWORK OF PROVISIONS INTRODUCED IN THE CHAIRMAN'S DRAFT NEGOTIATING TEXT AT THE SECOND AND THIRD SESSIONS OF THE CONFERENCE**

At the second session of the Conference,<sup>695</sup> the Chairman introduced a negotiating text that addressed the following:

- (i) The nature of conservation measures to be established through cooperation
- (ii) Mechanisms for international cooperation
- (iii) Regional fisheries management organizations or arrangements
- (iv) Flag State responsibilities
- (v) Compliance and enforcement of high seas fisheries conservation and management measures (compliance and enforcement by flag States and regional arrangements for compliance and enforcement)
- (vi) Port states
- (vii) Non-parties to a subregional or regional agreement or arrangement
- (viii) Dispute settlement
- (ix) Compatibility and coherence between national and international conservation measures for the same stock
- (x) Special requirements of developing States
- (xi) Review of the implementation of conservation and management measures

At the third session of the Conference<sup>696</sup> the revised negotiating text introduced articles on the objective, application and general principles of the draft Agreement and three annexes addressing the following:

- (i) Minimum standards for data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks
- (ii) Suggested guidelines for applying precautionary reference points in managing straddling fish stocks and highly migratory fish stocks
- (iii) Arbitration

### **SIGNIFICANT PROVISIONS ADDED DURING THE CONFERENCE TO THE CHAIRMAN'S DRAFT NEGOTIATING TEXT**

Article	Title	Provisions added to Chairman's draft negotiating text
1	Use of terms and scope	Definitions of "convention and management measures," "fish," "arrangement."
3	Application	3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis with respect to areas under national jurisdiction.

<sup>694</sup> For additional information, see Donald M. Grzybowski and others, "A historical perspective leading up to and including the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks," *Pace Environmental Law Review*, vol. 13, No. 1 (Fall 1995); available at <https://core.ac.uk/download/pdf/46711395.pdf>.

<sup>695</sup> 12–30 July 1993.

<sup>696</sup> 14–31 March 1994.

Article	Title	Provisions added to Chairman's draft negotiating text
4	Relationship between this Agreement and the Convention	Nothing in the Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention.
5	General principles	Coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate do, as follows: (d) Assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks (i) Take into account the interests of artisanal and subsistence fishers
6	Application of the precautionary approach	7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.
7(2)	Compatibility of conservation and management measures	2 In determining compatible measures, States shall do, as follows:  (b) Take into account previously agreed measures established and applied for the high seas in accordance with the Convention with respect to the same stocks by relevant coastal States and States fishing on the high seas.  (c) Take into account previously agreed measures established and applied in accordance with the Convention with respect to the same stocks by a subregional or regional fisheries management organization or arrangement.  7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.  8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag that fish for such stocks on the high seas.
16	Areas of high seas surrounded entirely by an area under the national	2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to



Article	Title	Provisions added to Chairman's draft negotiating text
	jurisdiction of a single State	agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures with respect to vessels flying their flag in order that they not engage in fisheries that could undermine the stocks concerned.
20	International cooperation in enforcement	<p>6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.</p> <p>7. States parties that are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels that have engaged in activities that undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.</p>
21	Subregional and regional cooperation in enforcement	Paragraphs 1–18 were completely changed. <sup>697</sup>
22	Basic procedures for boarding and inspection pursuant to article 21	New paragraphs 1–4. <sup>698</sup>
23	Measures taken by a port State	3. States may adopt regulations empowering the relevant national authorities to prohibit landings and trans-shipments where it has been established that the catch has been taken in a manner that undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.
30	Procedures for the settlement of disputes	Procedures in paragraphs (1), (2) and (3) were changed from the original. <sup>699</sup>

<sup>697</sup> Please refer to the Agreement, too lengthy for inclusion in this table.

<sup>698</sup> Please refer to the Agreement, too lengthy for inclusion in this table.

<sup>699</sup> 1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

Article	Title	Provisions added to Chairman's draft negotiating text
		Paragraphs (4) and (5) are new. <sup>700</sup>
35	Responsibility and liability	New. States parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.
37-40	Signature Ratification Accession Entry into force	Amended. <sup>701</sup>
41	Provisional application	New. 1. This Agreement shall be applied provisionally by a State or entity that consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.  2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.
47	Participation by international organizations	New. <sup>702</sup>

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to art. 287 of the Convention shall apply to the settlement of disputes under this part, unless that State party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to art. 287 for the settlement of disputes under this Part.

<sup>700</sup> 4. A State Party to this Agreement that is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in art. 287, para. 1, of the Convention for the settlement of disputes under this Part. Art. 287 shall apply to such a declaration, as well as to any dispute to which such State is a party that is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in annex V, art. 2; annex VII, art. 2; and annex VIII, art. 2, for the settlement of disputes under this Part.

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

<sup>701</sup> Please refer to the Agreement, too lengthy for inclusion in this table.

<sup>702</sup> Please refer to the Agreement, too lengthy for inclusion in this table.

## **ANNEX 2: SUMMARY FRAMEWORK OF THE AGREEMENT**

### **PART I – GENERAL PROVISIONS**

- |   |  |   |
|---|--|---|
| 1 | Use of terms and scope                                 | Defines key terms (Convention, conservation and management measures, fish, arrangement, States parties), applies to States parties and defined entities.  |
| 2 | Objective  | Ensures long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.  |
| 3 | Application  | Applies to conservation and management in areas beyond national jurisdiction, except for articles 6 and 7. Coastal States must apply principles to conservation and management under national jurisdiction. |
| 4 | Relationship between this Agreement and the Convention | Nothing will prejudice the rights, jurisdictions and duties of States under the Convention. Agreement to be applied, etc., in a manner consistent with the Convention.                                      |

### **PART II – CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

- |   |   |   |
|---|---|---|
| 5 | General principles                                    | Principles are provided for use by coastal States and States fishing on the high seas to give effect to their duty to cooperate.  |
| 6 | Application of the precautionary approach             | The duty to apply and obligations for implementing the precautionary approach are described.  |
| 7 | Compatibility of conservation and management measures | Cooperation is required between relevant coastal States and the States whose nationals fish for straddling fish stocks and highly migratory fish stocks. Measures established for the high seas and areas under national jurisdiction must be compatible in accordance with certain criteria and obligations. |

### **PART III - MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

- |   |   |   |
|---|---|---|
| 8 | Cooperation for conservation and management   | Cooperation between coastal States and States fishing on the high seas is required directly or through subregional or regional fisheries management organizations or arrangements. Their duty to cooperate through such organizations or arrangements is elaborated in various circumstances including consultations, becoming members and access to relevant stocks. |
| 9 | Subregional and regional fisheries management | A fundamental framework is given for States to agree when establishing or entering into subregional or regional fisheries   |

	organizations and arrangements	management arrangements for straddling or highly migratory fish stocks. When establishing such an arrangement, they must inform States with a real interest in its work.
10	Functions of subregional and regional fisheries management organizations and arrangements	Where States are fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, they must undertake certain actions to implement a wide range of specified functions.
11	New members or participants	Describes what States must take into account in determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management arrangement.
12	Transparency in activities of subregional and regional fisheries management organizations and arrangements	Affords an opportunity for representatives from intergovernmental and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks to take part as observers in meetings.
13	Strengthening of existing organizations and arrangements	States must cooperate to strengthen existing organizations and arrangements.
14	Collection and provision of information and cooperation in scientific research	States must ensure their flag vessels provide certain information and take measures to verify it, and cooperate to agree on and share data, analytical techniques and other.
15	Enclosed or semi-enclosed seas	Requirements for States in implementing the Agreement in an enclosed or semi-enclosed sea.
16	Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State	Provides a range of requirements for cooperation between the fishing States and the coastal State on which they must agree, and requires them to act in good faith.

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

17	Non-members of organizations and non-participants in arrangements	<p>Non-members and non participants, and States which do not otherwise agree to apply the conservation and management measures, are not discharged from their obligation to cooperate in the conservation and management of the stocks.</p> <p>They must not authorize their vessels to fish for the relevant stocks, and obligations of member States in relation to non-members are described including deterring activities of vessels that undermine the effectiveness of measures taken by the organizations or arrangements.</p>
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## **PART V - DUTIES OF THE FLAG STATE**

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| 18 | Duties of the flag State | Duties of the flag State of vessels that fish on the high seas must take steps to ensure that they comply with management and other measures taken by subregional and regional conservation and do not undermine their effectiveness. A wide range of measures/steps that flag States must take is provided. |
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## **PART VI - COMPLIANCE AND ENFORCEMENT**

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| 19 | Compliance and enforcement by the flag State                        | A wide range of requirements is provided for a flag State to take to ensure that its vessels are complying with subregional and regional conservation measures.   |
| 20 | International cooperation in enforcement                            | <p>States must cooperate, directly or through organizations or arrangements, to ensure compliance with and enforcement of conservation and management measures taken by subregional and regional organizations or arrangements.</p> <p>Various forms of cooperation are described, including mutual assistance, making evidence available, investigations and action.</p>   |
| 21 | Subregional and regional cooperation in enforcement                 | <p>A wide range of enforcement actions is given relating to boarding and inspection procedures in an area of competence of a subregional or regional fisheries management organization or arrangement. It applies to fishing vessels flying the flag of another State Party to the Agreement, whether or not it is a member of the relevant organization or arrangement.</p> <p>For the purposes of this article, "serious violation" is defined.</p> |
| 22 | Basic procedures for boarding and inspection pursuant to article 21 | Procedures are given, including requirements and authorities for authorized inspectors and requirements for vessel masters.   |
| 23 | Measures taken by a port State                                      | A port State has the right and the duty to take measures to promote the effectiveness of subregional, regional and global conservation and management measures. Its powers to inspect and prohibit landings and trans-shipments in cases where subregional or regional measures were undermined are elaborated.   |

## **PART VII - REQUIREMENTS OF DEVELOPING STATES**

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| 24 | Recognition of the special requirements of developing States | States are required to provide assistance to developing States and provide assistance to them, directly or through a specified programme and agencies, in relation to the |
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		conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for those stocks.
		Certain special requirements of developing States are specified.
25	Forms of cooperation with developing States	The purposes, forms and targets of cooperation with and assistance to developing States are provided.
26	Special assistance in the implementation of this Agreement	<p>States must cooperate to establish special funds to assist developing States in the implementation of the Agreement.</p> <p>States and international organizations are encouraged to assist developing States in establishing new or strengthening existing fisheries management organizations or arrangements.</p>

## **PART VIII - PEACEFUL SETTLEMENT OF DISPUTES**

27	Obligation to settle disputes by peaceful means	States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
28	Prevention of disputes	States must cooperate in order to prevent disputes and to this end agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements, and strengthen existing decision-making procedures as necessary.
29	Disputes of a technical nature	States may refer disputes of a technical matter to an ad hoc expert panel established by them. The panel must endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.
30	Procedures for the settlement of disputes	The provisions relating to the settlement of disputes set out in Part XV of the Convention apply to any dispute between States Parties to this Agreement concerning the interpretation or application of the Agreement or a subregional, regional or global fisheries agreement relating to straddling or highly migratory fish stocks to which they are parties, whether or not they are also Parties to the Convention. Further procedures are provided.
31	Provisional measures	Pending the settlement of a dispute, the parties must make every effort to enter into provisional arrangements of a practical nature. The court or tribunal may prescribe provisional measures, and a State Party may declare that the

International Tribunal for the Law of the Sea is not entitled to prescribe, modify or revoke provisional measures without its agreement.

- 32 Limitations on applicability of procedures for the settlement of disputes Article 297, paragraph 3, of the Convention applies also to this Agreement.

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

- 33 Non-parties to this Agreement States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

#### **PART X - GOOD FAITH AND ABUSE OF RIGHTS**

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

#### **Part XI - RESPONSIBILITY AND LIABILITY**

- 35 Responsibility and liability States Parties are liable in accordance with international law for damage or loss attributable to them in regard to the Agreement.

#### **PART XII - REVIEW CONFERENCE**

- 36 Review conference Four years after the date of entry into force of the Agreement, the Secretary-General must convene a conference with a view to assessing its effectiveness in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.

The conference must 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 to better address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

#### **PART XIII - FINAL PROVISIONS**

- 37 Signature The Agreement was open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and remained open for 12 months from 4 December 1995.

38	Ratification	The Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b).
39	Accession	The Agreement remains open for accession by States and the other entities referred to in article 1, paragraph 2(b).
40	Entry into force	<p>The Agreement entered into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.</p> <p>Afterwards, the Agreement enters into force for each State or entity which ratifies or accedes to the Agreement on the thirtieth day following the deposit of its instrument of ratification or accession.</p>
41	Provisional application	The Agreement may be applied provisionally by a State or entity which consents to its provisional application by notifying the depositary in writing, effective from the date of receipt of the notification. Provisional application terminates upon entry into force of the Agreement for the State or entity, or upon their notification of termination.
42	Reservation and exceptions	No reservations or exceptions may be made to the Agreement.
43	Declarations and statements	Article 42 does not preclude a State or entity, when signing, ratifying or acceding to the Agreement, from making declarations or statements, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that they do not purport to exclude or to modify the legal effect of those provisions in their application to that State or entity.
44	Relation to other agreements	The Agreement does not alter the rights and obligations of States Parties which arise from other compatible agreements and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations. States Parties may conclude agreements modifying or suspending the operation of provisions of the Agreement under specified conditions.
45	Amendment	Procedures for amending the Agreement are elaborated.
46	Denunciation	A State Party may denounce the Agreement.
47	Participation by international organizations	Rules for the participation of international organizations referred to in Annex IX, Article 1 of the Convention.
48	Annexes	The Annexes form an integral part of the Agreement and may be revised from time to time, based on scientific and technical considerations. Revisions adopted by consensus at a meeting of States Parties will be incorporated in the



Agreement, but if not so adopted the amendment procedures in article 45 apply.

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| 49 | Depositary      | The Secretary-General of the United Nations is the depositary.  |
| 50 | Authentic texts | The Arabic, Chinese, English, French, Russian and Spanish texts of the Agreement are equally authentic. |

#### **ANNEX I - STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA**

Annex I provides standard requirements for the collection and sharing of data in the following articles:

1. General principles
2. Principles of data collection, compilation and exchange
3. Basic fishery data
4. Vessel data and information
5. Reporting
6. Data verification
7. Data exchange

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

Technical Guidelines for the Application of Precautionary Reference Points are given in seven paragraphs that address the following:

1. Definition of precautionary reference point
2. Description of two types of precautionary reference points that should be used
3. Reasons why precautionary reference points should be stock-specific
4. Precautionary reference points in the context of management strategies
5. Fishery management strategies to ensure risk of exceeding limit reference points is very low
6. Provisional reference points to be set when information is poor or absent
7. Minimum standard for limit reference points

### ANNEX 3: EXAMPLES OF KEY PROVISIONS OF THE CONVENTION ELABORATED IN THE AGREEMENT

Convention article	Title	Summary
61	Conservation of the living resources	Includes requirements to ensure through proper conservation and management measures that the maintenance of living resources is not endangered by overexploitation; take into consideration the effects of the measures on species associated with or dependent upon the harvest species; and contribute and exchange available scientific information, catch and fishing effort statistics and other data relevant to the conservation of fish stocks.
62	Utilization of the living resources	<p>Includes requirements for coastal States to promote the objective of optimum utilization; take into account specified factors in giving access to the surplus of allowable catch that it does not have the capacity to harvest in its exclusive economic zone under this article; and to have laws and regulations consistent with the Convention that may provide for specified requirements.</p> <p>Includes requirements for nationals of other States fishing in the exclusive economic zone of a coastal State to comply with its conservation measures and other terms and conditions of its laws and regulations of coastal States, and provides several examples of what the coastal State may require.</p>
63	Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it	<p>Where the same stock or stocks of fish stocks occur within the exclusive economic zone of two or more coastal States, the States must seek to agree on necessary measures to coordinate and ensure the conservation and development of the stocks.</p> <p>Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area must seek to agree upon the measures necessary for the conservation of these stocks in the adjacent area.</p> <p>In each case, agreement may be sought directly or through appropriate subregional or regional organizations.</p>
64	Highly migratory species	The coastal State and other States whose nationals fish in the region for the highly migratory species listed in annex I of the Convention must cooperate with a view to ensuring conservation and promoting the objective of their optimum utilization throughout the region, both within and beyond the exclusive economic zone.

Convention article	Title	Summary
		<p>In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region must cooperate to establish such an organization and participate in its work.</p> <p>Cooperation may take place directly or through appropriate international organizations.</p>
73	Enforcement of laws and regulations of the coastal State	<p>The coastal State may take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with the Convention.</p> <p>Provision is made for procedures relating to arrested vessels, coastal State penalties and notification of the flag State.</p>
94	Duties of the flag State	<p>States must effectively exercise their jurisdiction and control in administrative, technical and social matters over ships flying their flags. Specific flag State duties and measures are required.</p> <p>States that have clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. The flag State must investigate and take appropriate action to remedy the situation.</p>
116	Right to fish on the high seas	<p>All States have the right for their nationals to engage in fishing on the high seas subject to their treaty obligations; the rights, duties and interests of coastal States; and the provisions of this section.</p>
117	Duty of States to adopt with respect to their nationals measures for conservation of the living resources of the high seas	<p>States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for conservation of the living resources of the high seas.</p>
118	Cooperation of States in the conservation and management of living resources	<p>States must cooperate in the conservation and management of living resources in the areas of the high seas.</p> <p>States whose nationals exploit identical living resources, or different living resources in the same area, must enter into negotiations with a view to taking the measures necessary for conservation of the living resources concerned.</p>

Convention article	Title	Summary
		They must, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.
119	Conservation of the living resources of the high seas	<p>States must, in determining the allowable catch and establishing other conservation measures for the living resources in the high seas:</p> <p>Take measures that meet specified criteria.</p> <p>Take into consideration the effects on associated or dependent species with a view to maintaining or restoring their populations above levels at which their reproduction may become seriously threatened.</p> <p>Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks must be contributed and exchanged on a regular basis through competent international organizations, where appropriate, and with participation by all States concerned.</p> <p>States must ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.</p>
194	Measures to prevent, reduce and control pollution of the marine environment	<p>States must take all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source. Criteria for measures are given.</p> <p>Measures must include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.</p>

## ANNEX 4: ADOPTION OF CONSERVATION AND MANAGEMENT MEASURES - CASE STUDIES

Three issues relating to the adoption of measures addressed at the 2023 Review Conference are elaborated below. They are conservation and management measures for sharks and deep-sea fisheries, strengthening the science-policy interface and establishment of rebuilding and recovery strategies.

### 1. Measures for sharks and deep-sea fisheries<sup>703</sup>

Mindful that the Review Conference has considered the adoption of specific conservation and management measures relating to sharks and deep-sea fisheries, the relevant instruments and practices are described below to inform implementation at regional and national levels.

#### *Conservation and management of sharks*

The Agreement provides the international legal framework for the conservation and management of shark fisheries, as many species of oceanic sharks are considered as straddling fish stocks or highly migratory species.

The 1999 FAO IPOA-Sharks<sup>704</sup> provides a framework for national plans of action for conservation and management of shark stocks, including for directed or non-directed fisheries.<sup>705</sup>

The 2022 General Assembly resolution on Sustainable Fisheries called upon States, including through RFMO/As, to urgently adopt and implement measures to fully implement the FAO IPOA-Sharks for directed and non-directed shark fisheries.<sup>706</sup>

Many countries and RFMO/As have updated legislation or measures on shark finning, including prohibitions on finning or removal at sea and setting by-catch limits or measures for mitigation.

Stock assessments and risk assessments are undertaken at national and regional levels, which may result in some cases in inclusion of stocks in a “red list.” Catch limits for select species are generally set on the basis of scientific advice.

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<sup>703</sup> Adoption and implementation of measures on sharks and deep-sea fisheries are addressed at the Review Conference, for example A/CONF.210/2023/6, paras. 78 and 80.

<sup>704</sup> [https://www.rac-spa.org/sites/default/files/doc\\_fish/ipao\\_sharks.pdf](https://www.rac-spa.org/sites/default/files/doc_fish/ipao_sharks.pdf).

<sup>705</sup> By 2023, 45 States had developed national plans of action on sharks and a further 14 were in progress. Nine regional plans of action on sharks had been developed with two in progress. The framework of the IPOA-Sharks includes: Ensure that shark catches from directed and non-directed fisheries are sustainable; Assess threats to shark populations, determine and protect critical habitats and implement harvesting strategies consistent with the principles of biological sustainability and rational long-term economic use; Identify and provide special attention, in particular to vulnerable or threatened shark stocks; Improve and develop frameworks for establishing and coordinating effective consultation involving all stakeholders in research, management and educational initiatives within and between States; Minimize unutilized incidental catches of sharks; Contribute to the protection of biodiversity and ecosystem structure and function; Minimize waste and discards from shark catches in accordance with art. 7.2.2(g) of the Code of Conduct for Responsible Fisheries (e.g. requiring the retention of sharks from which fins are removed); Encourage full use of dead sharks; Facilitate improved species-specific catch and landings data and monitoring of shark catches; Facilitate the identification and reporting of species-specific biological and trade data.

<sup>706</sup> A/RES/77/118, para. 30. The implementation should be “based on the best available scientific information, through, inter alia, limits on catch or fishing effort, by requiring that vessels flying their flag collect and regularly report data on shark catches, including species-specific data, discards and landings, undertaking, including through international cooperation, comprehensive stock assessments of sharks, reducing shark by-catch and by-catch mortality and, where scientific information is uncertain or inadequate, not increasing fishing effort in directed shark fisheries and urgently establishing science-based management measures to ensure the long-term conservation, management and sustainable use of shark stocks and to prevent further declines of vulnerable or threatened shark stocks.” The full utilization of dead sharks caught in the context of sustainably managed fisheries was encouraged.

FAO provides a range of technical support to FAO members and RFMO/As for the conservation and management of sharks, collaborates internationally and has developed the iSharkFin software to identify shark species in trade from shark fin images.<sup>707</sup>

### *Conservation and management measures for deep-sea fisheries*

The 2008 FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas (DFS Guidelines) were developed as a result of discussions in FAO in 2005, which identified key needs concerning the management of these fisheries, including information collection and collation, an inventory of deepwater fish stocks and an assessment of the effects of fishing on their populations and ecosystems, development of guidelines and a review of the legal framework.<sup>708</sup>

The issue of high seas bottom fisheries and their impacts on vulnerable marine ecosystems (VMEs) was thereafter the subject of extensive negotiation in the United Nations General Assembly. General Assembly resolution 61/105 on Sustainable Fisheries, adopted in December 2006, calls on flag States and RFMO/As to take action immediately, to sustainably manage fish stocks and protect VMEs, including seamounts, hydrothermal vents and cold-water corals, from destructive fishing practices.<sup>709</sup>

Furthermore, the resolution calls on States and RFMO/As to manage bottom fisheries on the high seas through assessing the impacts of individual bottom fishing activities, by preventing significant adverse impacts on VMEs, closing areas of the high seas to bottom fishing where VMEs are known or likely to occur unless fisheries in these areas can be managed to prevent significant adverse impacts, and ensuring the long-term sustainability of deep-sea fish stocks.<sup>710</sup> Actions taken by States and RFMO/As in response to subsequent consideration of bottom fishing in General Assembly resolutions on Sustainable Fisheries are recorded in reports of the Secretary-General.<sup>711</sup>

The FAO Deep-sea Fisheries Guidelines were then developed to provide relevant standards and criteria, and they provide recommendations on governance frameworks and management of deep-sea fisheries with the aim to ensure long-term conservation and sustainable use of marine living resources in the deep-seas, and to prevent significant adverse impacts on VMEs.<sup>712</sup>

They provide that States and RFMO/As should recognize the need, in managing deep-sea fisheries, to do so in a manner consistent with the Agreement.<sup>713</sup>

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<sup>707</sup> FAO surveyed work by RFMO/As in assessing impacts on deep-water sharks through its Deep Seas Project, with a follow-up project that will support those organizations and arrangements in collecting data and assessing impacts. FAO also reported on its work and strengthened its collaboration with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora under a 2006 Memorandum of Understanding, including on the listing of shark species. The latest version of the iSharkFin software was released in 2021.

<sup>708</sup> Background is available in COFI/2009/5/Rev.1 at <https://www.fao.org/3/k3861e/k3861e.pdf>. Discussions were held in the FAO Committee on Fisheries as a result of Deep Sea 2003, an International Conference on Governance and Management of Deep-Sea Fisheries held in Queenstown, New Zealand, 1–5 December 2003.

<sup>709</sup> <https://sdgs.un.org/documents/ares61105-sustainable-fisheries-incl-throug-19226>.

<sup>710</sup> Ibid., paras. 80–91.

<sup>711</sup> Available at [https://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_reports.htm](https://www.un.org/depts/los/general_assembly/general_assembly_reports.htm).

<sup>712</sup> The FAO *International Guidelines for the Management of Deep-sea Fisheries in the High Seas* (DSF Guidelines) also address major concerns about VMEs and provide (1) an internationally agreed-upon set of criteria for identifying a vulnerable marine ecosystem (VME); and (2) detailed suggestions for management actions to take once a marine area is designated as vulnerable. VMEs are groups of species, communities or habitats that may be vulnerable to impacts from fishing activities. The vulnerability of an ecosystem is related to the vulnerability of its constituent population, communities or habitats. The FAO DSF Guidelines include specific criteria – known as the VME criteria – to assist States in identifying VMEs in the context of deep-sea fisheries. FAO maintains a VME DataBase, which is a compilation of information on management measures taken to reduce current or potential impacts on areas where VMEs are known or likely to occur. It was developed in collaboration with the regional bodies with mandates to manage deep-sea fisheries in the areas beyond national jurisdiction (ABNJ) in response to a request from the UN General Assembly (61/105, para. 90) to create a database of information on VMEs in the ABNJ; <https://www.fao.org/documents/card/en/c/b02fc35e-a0c4-545a-86fb-4fc340e13b52>. <https://www.fao.org/3/i5549e/i5549e.pdf>.

<sup>713</sup> Art. 4.1.

The Guidelines provide a framework for data collection, assessments and monitoring, and control and surveillance and encourage States and RFMO/As<sup>714</sup> to take management measures that comply with relevant international instruments and are based on the precautionary approach and the ecosystem approach to fisheries management.

States and RFMO/As are taking action to establish long-term conservation and management measures for deep-sea fisheries, including the establishment of fisheries restricted areas, the enforcement of strict vessel protocols and the receipt of scientific advice on deep-sea stocks, in accordance with the FAO Deep-sea Fisheries Guidelines.

To support management of deep-sea fishing in areas beyond national jurisdiction, FAO maintains a database on VMEs, developed in collaboration with the RFMO/As with mandates to manage deep-sea fisheries in such areas.<sup>715</sup> It contains information on management measures taken to reduce adverse impacts, which could inform improvement of existing management measures and development of new measures.

## **2. Strengthening the science-policy interface**

The aim is to ensure that policy is informed by the best available science, and that measures are based on the best scientific evidence available. The thirteenth round of Informal Consultations of States Parties to the Agreement focused on the topic “Science-policy interface.”<sup>716</sup>

The importance of using sound scientific research to inform policy in order to achieve the sustainable management of fisheries was noted, among others, for the ecosystem approach, the precautionary approach, integrated approaches, evidence-based management, monitoring and compliance, transparency, and the involvement of different stakeholders, including fishers, Indigenous Peoples and the industry.

Possible elements of a strong effective science-policy interface were considered. These included: funding and organizing research programmes into specific species or regions; the use of electronic reporting systems; standardization of methodology for data collection and data validation; seeking independent scientific advice; participation of different types of stakeholders in the formulation of scientific advice and in policymaking; improved communication between scientists and policymakers; cooperation with other entities; and performance review processes.

The General Assembly has urged States to strengthen the science-policy interface in order to further improve the application of the ecosystem approach to fisheries management and to address uncertainties and changes such as those related to the impacts of climate change in support of the development of adaptive fisheries management strategies.<sup>717</sup>

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<sup>714</sup> While RFMO/As are given a central place in the management of these fisheries, the DFS Guidelines also offer advice on interim measures that may be taken in areas where no competent RFMO/As exist, or where an RFMO/A is in the process of developing the range of policies and measures required for effective management of deep-sea fisheries. The RFMO/As with a mandate to manage deep-sea fisheries in the areas beyond national jurisdiction cover most of the fished high seas areas of the world, and include the General Fisheries Commission for the Mediterranean (GFCM), North-East Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO), South East Atlantic Fisheries Organisation (SEAFO), South Pacific Regional Fisheries Management Organisation (SPRFMO), North Pacific Fisheries Commission (NPFC), and Southern Indian Ocean Fisheries Agreement (SIOFA); <https://www.fao.org/in-action/vulnerable-marine-ecosystems/background/regional-fishery-bodies/es/>.

<sup>715</sup> <https://www.fao.org/in-action/vulnerable-marine-ecosystems/es/>.

<sup>716</sup> The report is available at [https://www.un.org/depts/los/convention\\_agreements/ICSP13/ICSP13\\_final\\_report.pdf](https://www.un.org/depts/los/convention_agreements/ICSP13/ICSP13_final_report.pdf). Recommendations were also made at the 2019 FAO “International Symposium on Fisheries Sustainability: Strengthening the science-policy nexus,” aimed at improving the sustainability of capture fisheries and progressing towards the different targets and objectives of the Sustainable Development Goals. Proceedings are available at <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1279361/> in the form of an issue paper as part of the policy support and governance gateway of FAO.

<sup>717</sup> GA resolution 77/118, para. 201.

The FAO-GEF Common Oceans initiative supports a science-policy interface for both tuna and deep seas fisheries and by extension, the RFMO/As involved.<sup>718</sup>

The practice of RFMO/As includes the following:

- Establishing joint science-management working groups to explore more complex issues when drafting recommendations for management measures
- Adopting measures to improve the functioning of joint science-management working groups
- Consideration through scientific councils, committees, working groups or institutionalized dialogues
- Undertaking regular reviews of technical outputs by independent experts
- Conducting regular reviews that take into account adverse impacts of climate change and ocean acidification<sup>719</sup>

Several States have taken action to strengthen interaction between fisheries managers and scientists to ensure that conservation and management measures are based on the best available scientific evidence and meet the management objectives set by RFMO/As.

### **3. Establishment of rebuilding and recovery strategies<sup>720</sup>**

Rebuilding and recovery strategies address the obligation for States to ensure that conservation and management measures are designed to maintain or restore stocks at maximum sustainable yield. In another context, restoration requirements focus on a precautionary approach in cases where stocks have exceeded reference points, so this issue spans different requirements in the Agreement.<sup>721</sup>

RFMO/As efforts towards the establishment of rebuilding and recovery strategies are carried out through practices that include the following:

- Developing specific rebuilding plans and related harvest control rules
- Adopting harvest strategies
- Applying total allowable catches and quotas
- Developing adaptive management strategies
- Setting moratoriums on fish stocks
- Banning targeting fishing on several species

States' practices for establishing rebuilding and recovery strategies include measures such as the following:

- Applying the precautionary approach
- Implementing threat abatement and recovery plans
- Conducting review and research studies to determine the status of fish stocks
- Establishing clear rules covering principles and objectives, for example through multi-year plans, which can be used as a major tool for progressively restoring populations of fish stocks above biomass levels capable of producing maximum sustainable yield

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<sup>718</sup> Available at <https://www.fao.org/in-action/commonoceans/projects/tuna-biodiversity/en/>.

<sup>719</sup> A/CONF.210/2023/1, paras. 135 and 136.

<sup>720</sup> Arts. 5(b), 6(3)(b), 6(4) and annex II. Establishment of rebuilding and recovery strategies is addressed at the Review Conference.

<sup>721</sup> Art. 5(b) calls for measures that are designed to restore stocks at levels capable of producing maximum sustainable yield as qualified by specific factors, and art. 6(3)(b) and 6(4) require application of the guidelines in annex II, where reference points are exceeded to restore stocks. Annex II, para. 4 requires management strategies to seek to maintain or restore populations of harvested stocks at levels consistent with previously agreed precautionary reference points. Annex II, para. 5 requires fishery management strategies to ensure that the risk of exceeding limit reference points is very low. "If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average."