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Oceans and the law of the sea: sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments

The status and implementation of the Agreement for the Implementation of the Provisions of the United Nations Convention for the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement) and its impact on related or proposed instruments throughout the United Nations system, with special reference to implementation of Part VII of the Fish Stocks Agreement, dealing with the requirements of developing States

Report of the Secretary-General

Summary

The present report provides an overview of the main trends in implementation of the United Nations Fish Stocks Agreement since its adoption in 1995 and entry into force in 2001, with analysis and recommendations with respect to steps to improve implementation of the Agreement in the future. The report responds to requests in General Assembly resolution 56/13 of 28 November 2001, paragraphs 8 and 19, and resolution 57/143 of 12 December 2002, paragraphs 13 to 15 and 19.

The main conclusions and recommendations of the report include:

(a) The Agreement has made an important impact on the conservation and management of international fisheries, representing a benchmark for many States and recognized by the Plan of Implementation of the World Summit on Sustainable Development in 2002. However, a binding international treaty, the full effect of the Agreement will only be achieved by wider acceptance and implementation of all its provisions by all States;

* A/58/150.

(b) The current depleted state of stocks covered by the Agreement and the costs associated with effective implementation of the Agreement is likely to mean that the main short-term focus will be on distribution of actual fishing opportunities and full recovery of management costs, rather than major development of new fisheries;

(c) Specific suggestions for action by States acting through regional fisheries management organizations (RFMOs), and in their national capacities as coastal States, States fishing on the high seas and port States. Also, suggestions for improved cooperation at the national, regional and global level;

(d) Suggestions for priority areas for spending under a new Part VII trust fund, currently under consideration by the General Assembly, based on a review of implementation of Part VII of the Agreement dealing with the requirements of developing States.

The Secretary-General is particularly grateful to the Government of the United Kingdom of Great Britain and Northern Ireland for technical assistance with the report, provided in the form of background research on issues related to the implementation of Part VII of the Agreement.

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Abbreviations

APFIC	Asia-Pacific Fisheries Commission
CARIFORUM	Caribbean Forum
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CITES	Secretariat for the Convention on International Trade in Endangered Species of Wild Fauna and Flora
COFI	FAO Committee on Fisheries
CPPS	South Pacific Permanent Commission
CRFM	Caribbean Regional Fisheries Mechanism
DOALOS	Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FFA	Forum Fisheries Agency
GEF	Global Environment Facility
GFCM	General Fisheries Commission for the Mediterranean
I-ATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission (UNESCO)
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
IUU fishing	Illegal, unreported and unregulated fishing
MCS	Monitoring, control and surveillance
NAFO	North-West Atlantic Fisheries Organization
NEAFC	North-East Atlantic Fisheries Commission
NGO	Non-governmental organization
PSC	Pacific Salmon Commission
RFMO	Regional fisheries management organization

SADC	Southern African Development Community
SEAFO	South-East Atlantic Fisheries Organization
SWIOFC	South-West Indian Ocean Fisheries Commission
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
VMS	Vessel monitoring system
WCPFC	Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
WECAFC	Western Central Atlantic Fishery Commission
WTO	World Trade Organization

I. Introduction

1. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement) entered into force on 11 December 2001. As at 1 May 2003, 34 States had ratified or acceded to the Agreement. States Parties to the Agreement met informally in New York from 30 to 31 July 2002.²

2. Since the adoption of the Agreement in 1995, the General Assembly has called for its implementation in successive resolutions.³ In 2002 the Plan of Implementation of the World Summit on Sustainable Development encouraged States to ratify or accede to the Agreement, and specified areas for action related to implementation of the Agreement.⁴ The report entitled *The State of World Fisheries and Aquaculture 2002* (Sofia 2002)⁵ notes that the Agreement complements the High Seas Compliance Agreement and the Code of Conduct for Responsible Fisheries. This complementarity includes the International Plans of Action (IPOAs) related to the Code, in particular the IPOA to prevent, deter and eliminate illegal, unregulated and unreported (IUU) fishing.⁶

3. The present report responds to requests by the General Assembly for a report on implementation of the Agreement, including a special study of the provisions of the Agreement regarding the requirements of developing States.⁷ It features findings from a voluntary survey of States and other stakeholders initiated by the Division for Ocean Affairs and the Law of the Sea (DOALOS) on 18 December 2002. The report also draws on a wide range of open sources, including web sites of regional fisheries management organizations (RFMOs) and extensive relevant work by the Food and Agriculture Organization of the United Nations (FAO) and other international bodies. The special study appears as section V below. That section additionally draws on background material provided by the Government of the United Kingdom of Great Britain and Northern Ireland as technical assistance with the preparation of the report.⁸

4. Following suggestions made by States Parties at their informal meeting in 2002, the report is arranged according to themes and the results of the survey appear as far as possible in the form of tables annexed to the report.

5. Procedurally, the relatively small number of responses to the survey suggests scope to improve the preparation process for reports such as this in the future. Given competing demands from FAO fisheries surveys, one solution might be to improve coordination on surveys in future. Section VII below includes suggestions on procedural issues.

6. In preparation of the report, the following four constraints have been noted: namely, (a) the recent entry into force and relatively small number of Contracting Parties means that there is limited State practice under the Agreement as a binding instrument; (b) several important fishing States are not parties; (c) no RFMO is composed exclusively of Parties to the Agreement so it is not possible to say that any RFMO is implicitly bound by the Agreement; and (d) up to April 2003, none of the agreements concluded since 1995 to establish new RFMOs has been in force, so practice is again limited.⁹

7. Notwithstanding these constraints, practice since the adoption of the Agreement demonstrates that even before entry into force, provisions of the Agreement have been widely used as a benchmark for measuring State practice. Examples of such practice are included in the report. As a report on implementation of the Agreement as a whole, however, the starting position in the present report is that to be effective, the Agreement, like the United Nations Convention on the Law of the Sea (UNCLOS), should be accepted and its binding obligations fully implemented.

II. The role of States under the Agreement

A. The role of all States, including non-parties to the Agreement

8. All coastal States, States fishing on the high seas and port States have a role in implementation of the Agreement. This is illustrated in part by the relationship between the Agreement and UNCLOS. The objective of the Agreement is the *implementation* of provisions of UNCLOS, and nothing in it prejudices the rights, jurisdiction and duties of States under UNCLOS.¹⁰ Parties to UNCLOS who are not parties to the Agreement are bound by the obligation to cooperate with respect to the conservation and management of stocks, in accordance with articles 63, 64 and 118 of UNCLOS.

9. Article 33 of the Agreement is relevant to all States as it provides for Parties to the Agreement to encourage non-parties to become parties and to take measures consistent with international law to deter the activities of vessels flying the flag of non-parties that undermine the implementation of the Agreement.¹¹

10. Two positive trends from the survey are wide application of the Agreement even by non-parties, and a high priority given to almost all of the general principles (a)-(l) set out in article 5 (see annex V below). Of all States and RFMOs surveyed, 22 out of 28 reported full implementation of the Agreement (including 6 out of 8 non-parties), and 4 partial implementation. Two RFMOs reported non-implementation. On article 5, almost all principles were consistently rated as extremely relevant or relevant, with principles (a), (b), (h) (j) and (l) consistently highly rated, and only principles (g) and (i) noted by a small number of respondents as not very relevant. But overall, a wide range of constraints to implementation was noted by respondents. Those constraints are considered further below.¹²

B. Coastal States

1. The role of coastal States in implementation of the Agreement

11. The coastal State has a central and demanding role to play in the effective implementation of the Agreement. The Agreement also offers an important opportunity to coastal States, through the exercise of their sovereign rights in accordance with articles 61 and 62 of UNCLOS, to contribute to and benefit from conservation and management of stocks covered by the Agreement.

12. One key provision for coastal States is the requirement in article 3 of the Agreement for the application of the general principles of the Agreement, the precautionary approach and provisions relating to compatibility of measures in area

under national jurisdiction as well as on the high seas.¹³ The opportunity comes from the right of the coastal State to set the total allowable catch in the exclusive economic zone (EEZ) and conditions for access by other States to fish in the EEZ.¹⁴

13. The distribution of stocks covered by the Agreement adds to the opportunity for coastal States. Although not all data distinguishes between catches taken on the high seas and inside EEZs, the greater part of the distribution of the stocks covered by the Agreement, and the richest fishing grounds for these stocks, are found in EEZs.¹⁵ For practical reasons, such as easier access to ports for both vessel services and landings, many fishers also prefer to fish within EEZs.

14. In practice, implementation of the Agreement by coastal States in their EEZs requires the adoption of comprehensive fisheries management plans at the national level. This is an area where the complementarity of the Agreement with the Code of Conduct is evident. The FAO survey of implementation of the Code shows increasing numbers of management plans established by coastal States, with reasonable levels of implementation.¹⁶ Also, of the States that responded to the DOALOS survey, all except one have arrangements in place to ensure compatibility of measures and are members of, or cooperate with, relevant RFMOs in order to agree upon such measures.

15. Major gaps remain, however. Almost all respondents, including RFMOs, indicated that although data are widely collected, coverage and quality of assessment could be improved. Some coastal States also reported difficulty monitoring large and diverse fleets from third countries, while lack of enforcement of measures, even where they exist, is a major problem. Particularly for developing coastal States, responses to the DOALOS and FAO surveys indicate that the main reason for the gaps is lack of capacity. There is no doubt that full implementation of the Agreement by coastal States imposes a significant resource burden.

16. One resource issue for coastal States is design of conservation and management measures in order to recover, where possible, the full costs of their effective implementation and enforcement. Although not regulated by the Agreement, recovery of costs is an issue for implementation of the Agreement. For coastal States that do not have the capacity to harvest the entire catch in their EEZ, one important source of revenue is access agreements with high seas fishing States.

17. Purely commercial aspects of such agreements are a matter for the States involved. However, there may be scope to treat the cost of implementation and enforcement in accordance with the Agreement as a distinct element to be recovered in the cost of access agreements.¹⁷ Such an approach should benefit both coastal and high seas fishing States by promoting the sustainability of the fishery. The approach could complement assistance to developing States, including targeted assistance and industry contributions under access agreements, reviewed in section V below.

18. The conclusion based on this brief introduction is that although there has been good progress, gaps in the implementation by coastal States of the jurisdictional framework provided by UNCLOS and the Agreement mean that fully effective use is not being made by all coastal States of the management tools available to them to contribute to implementation of the Agreement. For developing coastal States in particular, a key constraint is insufficient capacity to exercise fully their sovereign rights. Possible solutions include the provision of assistance in accordance with Part

VII of the Agreement and greater recovery of conservation and management costs through the terms for access agreements.

2. Cooperation among coastal States

19. Another issue for coastal States, again not directly regulated by the Agreement, is cooperation among States with adjacent EEZs. The absence of such cooperation was cited by respondents to the survey among constraints to implementation of the Agreement, indicating this as another example of effective management in areas under national jurisdiction as a prerequisite for management in adjacent high seas areas.

20. Cooperation between adjacent coastal States falls into two categories: cooperation with respect to straddling and highly migratory stocks found in both adjacent EEZs and adjacent high seas areas; and cooperation for other transboundary stocks within EEZs. In both cases, many features of cooperation, in particular establishing a relationship of trust based on shared knowledge of the resource, followed by cooperation in design and enforcement of conservation and management measures, tend to mirror the dynamics of larger-scale cooperation with high seas fishing States through RFMOs.¹⁸

21. State practice shows how such cooperation can contribute to implementation of the Agreement. Examples include coastal State cooperation in the Forum Fisheries Agency (FFA) as a part of work with high seas fishing States to establish a Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), and coordination among members of the Southern African Development Community (SADC) in work to establish a South-East Atlantic Fisheries Organization (SEAFO).

22. Responses to the survey also offered one example, the Pacific Salmon Commission (PSC), of a coastal State arrangement widely applying of relevant provisions of the Agreement to anadromous stocks not covered by the Agreement. This indicates the usefulness of the Agreement as a guide to cooperation even in areas where it does not formally apply.¹⁹

C. States fishing on the high seas (flag States)

23. The Agreement strikes a balance between the rights and duties of coastal States and of States fishing on the high seas (flag States). Analogous to the opportunities considered above for coastal States, the Agreement also offers long-term economic opportunities to flag States by providing for the long-term sustainability of high seas fish stocks covered by the Agreement.

24. The primary jurisdiction of the flag State over fishing vessels on the high seas gives States acting in that capacity the central role in the effective implementation of the Agreement. The duties of the flag State are clearly set out in the Agreement.²⁰ A key point is the obligation to ensure that its vessels only fish in areas regulated by RFMOs if the State is a member of the relevant RFMO and/or if it otherwise agrees to apply measures adopted by the RFMO.²¹ This is a powerful provision which, for States Parties to the Agreement, adds substance to the general obligation to cooperate established by UNCLOS.

25. Responses to the survey show that most States, including non-parties, have measures in place to exercise flag State control. For example, all States reported implementation of most or all provisions on data collection in accordance with article 14, and most reported implementation of flag State duties in accordance with article 18, with the most common gaps being full implementation of the detailed provisions relating to inspection.²²

26. These encouraging responses from flag States should, however, be read together with RFMO responses where illegal, unreported and unregulated (IUU) fishing by non-members of RFMOs is a major problem, in particular where vessels fly the flag of States operating open registers.²³ On the complementary instruments, FAO also reported a mixed record of flag State implementation of the Code of Conduct.¹⁶ On IUU fishing, an international conference hosted by the Government of Spain in 2002 identified inadequate flag State control as a key cause of IUU fishing.²⁴

27. The conclusion is that although many flag States have measures in place to implement their duties, standards of flag State implementation of the Agreement remain inadequate. Wider acceptance and implementation of the Agreement, which unlike the complementary instruments establish *binding* obligations on flag States, offer a key tool to help deal with IUU fishing.²⁵

D. Port States

28. The powers available to port States under article 23 include inspection and prohibition of landings or trans-shipments of catch taken in a manner that undermines applicable conservation and management measures. Port State measures under the Agreement complement those under the Code of Conduct and IPOA on IUU fishing.²⁶ Responses to the survey showed that 12 out of 17 States responding have some form of port controls in place, including under the still relatively limited number of regionally agreed schemes.²⁷ Among controls available under article 23.3, those on trans-shipment appear the least widely used.

29. FAO and the International Maritime Organization (IMO) have done some initial work on scope to develop use of port State controls in the context of IUU fishing.²⁸ Overall, expansion of such controls offers a powerful tool for achieving both implementation of the Agreement and more effective action against IUU fishing.

III. States acting through subregional and regional fisheries management organizations and arrangements²⁹

A. The role of RFMOs under the Agreement

30. Part III of the Agreement sets out the central role of appropriate RFMOs as mechanisms through which States Parties to the Agreement should act to meet their obligations and exercise their rights under the Agreement. As noted in the introduction, at present no existing or planned RFMO is composed entirely of States Parties to the Agreement. Some survey respondents noted this situation as a key constraint on implementation of the Agreement.

31. Nevertheless, since the adoption of the Agreement in 1995, existing RFMOs (pre-1995 RFMOs) have adopted a wide range of measures reflecting provisions of the Agreement, and much of the Agreement has been directly incorporated in some instruments to establish new RFMOs (post-1995 RFMOs). Of the pre-1995 RFMOs, five out of seven responded to the survey that they generally apply the Agreement, with one partially applying the Agreement and one not applying the Agreement. That represents a positive trend in implementation of the Agreement.

32. Many provisions of the Agreement lend themselves to direct incorporation in RFMO instruments. In that way, the Agreement offers a blueprint for regional instruments. At the same time, article 8.1 provides for RFMOs to be established "taking into account the specific characteristics of the subregion or region". Hence the Agreement provides for flexibility in the precise form of RFMOs. This flexibility has been used in both post- and pre-1995 RFMOs.

33. The present section reviews progress towards achieving the huge potential offered by RFMOs in facilitating implementation of the Agreement.

B. Distribution of RFMOs and gaps in coverage of fish stocks covered by the Agreement

34. Article 8.5 of the Agreement provides for the establishment of RFMOs where none exists. In order to help identify where none exists, the following table is an overview of existing RFMOs:

Indicative table of principal RFMOs with membership including coastal States and high seas fishing States relevant to implementation of the Fish Stocks Agreement³⁰

<i>Region</i>	<i>Competent regulatory RFMO(s): (italics: not operational as at April 2003)</i>	
	<i>Straddling stocks</i>	<i>Highly migratory stocks</i>
Atlantic/adjacent seas	North-East Atlantic Fisheries Commission (NEAFC)	International Commission for the Conservation of Atlantic Tunas (ICCAT)
	North-West Atlantic Fisheries Organization (NAFO)	
	<i>General Fisheries Commission for the Mediterranean (formerly General Fisheries Council for the Mediterranean) (GFCM)</i>	
	<i>South-East Atlantic Fisheries Organization (SEAFO)</i>	
Indian Ocean/Indo Pacific	<i>South-West Indian Ocean Fisheries Commission (SWIOFC)</i>	Indian Ocean Tuna Commission (IOTC)

<i>Competent regulatory RFMO(s): (italics: not operational as at April 2003)</i>		
<i>Region</i>	<i>Straddling stocks</i>	<i>Highly migratory stocks</i>
Pacific		Inter-American Tropical Tuna Commission (I-ATTC) <i>Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC)</i>
	<i>Galapagos Agreement</i>	<i>Galapagos Agreement</i>
Trans-ocean	Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)	Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

Notes

(a) Although not establishing a new organization, one relevant arrangement not shown in the table is the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, 1994.

(b) The SEAFO Convention applies to all fish stocks, but provides for coordination with other bodies, so in practice defers to other competent bodies on highly migratory species. CCAMLR also covers all living marine resources, with similar provisions on coordination. GFCM is similar to SEAFO, deferring to other bodies on tuna, although it does work on its own measures for some other highly migratory species.

(c) The WCPFC and SEAFO conventions draw on language from the Agreement. Participants in their negotiation, some already party to the conventions, include non-parties to the Agreement. Work is under way to revise the I-ATTC founding Convention taking the Agreement into account.³¹ As at March 2003, negotiations to establish a SWIOFC were at a relatively early stage.

(d) The Galapagos Agreement signatories are South East Pacific coastal States. Once in force, the Agreement will be open to high seas fishing States. The Agreement applies to straddling and highly migratory fish stocks³² but without reference to the Fish Stocks Agreement. In advance of involvement by high seas fishing States, the eventual relationship between the two agreements is unclear.³³

(e) GFCM was established in 1949. The reference in italics is to the revised 1997 GFCM Convention (not in force), which strengthens the organization, establishing an autonomous budget.

(f) In addition to the RFMOs indicated, the mandate of the Asia-Pacific Fisheries Commission (APFIC) includes all living marine resources in the Indian Ocean and adjacent Pacific areas. Its response to the survey indicated that no measures have been implemented in accordance with the Agreement, owing in particular to the absence of any joint management mechanism and uncertainty about

stock distribution. The Caribbean Regional Fisheries Mechanism (CRFM) may offer additional coverage, especially for non-ICCAT species, but at present has no regulatory competence.

35. The table covers RFMOs with regulatory competence with respect to the functions set out in article 10 of the Agreement,³⁴ as against those with a more restricted advisory competence, usually on scientific matters.³⁵ The two categories of RFMO may exist in parallel, and complement each other, illustrated for example by the International Council for the Exploration of the Sea (ICES), which advises NEAFC, and FFA, which is likely to advise WCPFC. However, for a global overview of RFMO implementation of the Agreement, regulatory competence is essential.

36. One difficulty for a comprehensive survey of coverage is that historically, the gradual development of an international network of RFMOs has often been driven by commercial interests in particular stocks and/or regions, so RFMO areas of regulatory and geographical competence do not always fit neatly with the objectives of the Agreement. Commercial viability of fisheries is also likely to influence the priority given to establishing new RFMOs.

37. A further complication in assessing coverage is scientific doubt about the exact distribution of stocks in high seas areas. One problem is where data do not systematically distinguish between catch taken on the high seas and in areas under national jurisdiction. Also, for some stocks there is scientific uncertainty whether the stock is straddling, or may, for example, be associated with seamounts as a discrete high seas stock. Although beyond the scope of the present review, there is also uncertainty over whether some stocks are straddling or highly migratory in character.³⁶

38. Based on the competence and coverage of the RFMOs in the table, and notwithstanding the caveats noted above, the overview above indicates relatively good global coverage of both regions and stocks. The following are suggested as possible gaps:

(a) For highly migratory stocks (subject as indicated to eventual practice under the Galapagos Agreement): the South-East Pacific Ocean beyond the limits of the I-ATTC area. Chile and the European Community, however, have reported progress on cooperative arrangements with respect to swordfish in this area;³⁷

(b) For straddling stocks, where there are more scientific uncertainties: the South-West Atlantic, South-East Pacific, Caribbean, Western Pacific and (subject in part to the limits of the eventual SWIOFC Convention area) high seas areas adjacent to the CCAMLR zone.

39. Another observation based on the competences of the RFMOs surveyed is application of the Agreement to stocks which are neither straddling nor highly migratory. In the same way that the Pacific Salmon Commission (PSC) reported application of conservation and management measures based on the Agreement to anadromous stocks, SEAFO and SWIOFC anticipate cover for discrete high seas stocks. Those examples may be regarded as indications of the Agreement contributing to establishing best practice and minimum standards for international fisheries cooperation in general.³⁸

C. RFMO membership and implementation of measures agreed within RFMOs, including the problem of non-members

40. The analysis above illustrates the scope of existing and planned RFMOs. The next question is whether all relevant States are actually members of RFMOs or are otherwise implementing measures adopted by the RFMO, as provided for by the Agreement in particular, articles 8.3 and 17. Feedback from the survey shows that the membership of RFMOs is increasing. For example, some 12 States have joined ICCAT since 1995. Among non-members of RFMOs, the European Community, for example, reports that it implements I-ATTC measures, despite not being a member. Non-membership, in particular by non-parties to the Agreement who operate open registers is, however, a major problem, and enforcement of measures in respect of non-parties remains very difficult.

41. Among approaches taken to deal with the problem, some RFMOs actively encourage non-members to join. Several new ICCAT members were prompted to join after being associated with vessels violating ICCAT measures. The SEAFO Convention provides for an automatic invitation to non-members to join if they start fishing in the SEAFO area. Several RFMOs have also adopted measures to exchange information on and deter activities by non-members, as is provided for by article 17.3-4 of the Agreement. Examples include I-ATTC and IOTC registers of vessels authorized to fish; CCAMLR and ICCAT catch documentation schemes;³⁹ and use of diplomatic channels to protest against fishing by non-members.

42. The question of non-members is further complicated for some RFMOs by the issue of allocation of fishing opportunities to new members (see discussion in paras. 52-56 below).

D. Steps taken to strengthen RFMOs established before the adoption of the Agreement

43. Ensuring geographical coverage by RFMOs and membership of those RFMOs are important first steps, but the real test is implementation of conservation and management measures and where necessary strengthening RFMOs in accordance with article 13 of the Agreement. All pre-1995 regulatory RFMOs that responded to the survey indicated a need to strengthen their organization.⁴⁰

44. Perhaps the most radical approach to strengthening pre-1995 RFMOs is the I-ATTC initiative to renegotiate its founding Convention. That may be regarded as a model approach to establish binding regional mechanisms for implementation of the Agreement, analogous to the way the post-1995 RFMOs have given the possibility to States to agree new binding arrangements.

45. There is no doubt that binding regional arrangements are the best means for achieving implementation of the Agreement. At the same time, negotiation of new instruments carries institutional costs, especially where there is no consensus among participants on all aspects of the Agreement. Lengthy negotiations may also divert attention from the adoption of actual conservation and management measures in accordance with the Agreement.

46. An alternative approach is step-by-step implementation of the Agreement through ensuring that new measures adopted within RFMOs conform to the

Agreement. That approach is implicit in the following illustration of the steadily increasing volume of conservation and management measures adopted since 1995, which do take account of the Agreement.

1. Adoption of conservation and management measures in accordance with the Agreement

47. The responses from RFMOs to the survey indicate a relatively high level of activity with respect to provisions of the Agreement. Almost all RFMOs have adopted a wide variety of measures directly regulating fishing activities, such as for fishing at levels commensurate with the state of resources, to deal with overfishing, capacity, gear selectivity and by-catch. The precautionary approach is widely endorsed, and in most cases precautionary reference points have been established in accordance with annex II of the Agreement. Measures taking account of ecosystems are less widely applied, by only five out of eight RFMO respondents.

48. Notably, where measures reflecting precautionary and ecosystem approaches have been taken, this is generally in the absence of any specific mandate to do so in founding instruments of pre-1995 RFMOs. The practice, however, complements action taken under the Code of Conduct.⁴¹

49. All RFMO respondents except one have standard requirements for the collection of scientific, technical and statistical data, including as set out in annex I of the Agreement,⁴² and most are satisfied that reliable stock assessments are made on the basis of data available. At the same time, RFMO respondents see scope to improve data collection and management, for example, in the following areas:

(a) Expansion in the use of vessel monitoring systems (VMS) as a tool for data collection (for example through electronic logbooks to provide data to flag States and/or RFMO secretariats in real time) as well as for monitoring, control and surveillance (MCS) activities. Less than half of RFMOs that responded to the survey have VMS schemes in place;⁴³

(b) Improvements in the completeness of data made available. Two issues here are the reluctance of some States to share data, and commercial confidentiality of non-aggregated data;⁴⁴

(c) Participation by a representative sample of qualified scientists from all RFMO member States.

50. Notwithstanding the foregoing suggestions, the absence of any systematic approach in most RFMOs to implementation of the Agreement is a significant obstacle to implementation. A formal commitment by RFMO members to apply the Agreement would offer the best remedy. Where that is not available, an alternative might be for new conservation and management measures to be assessed according to relevant provisions of the Agreement. Measures which meet the standard could be presented as such, while those which do not, for whatever reasons, should also be recognized as such so that this is clear to the States who adopt them. Such an approach might form part of RFMO performance indicators, already under consideration among RFMOs.⁴⁵

E. Key constraints within RFMOs to the implementation of the Agreement

51. The following key constraints to implementation of the Agreement through RFMOs were identified among responses to the voluntary survey and have been the subject of difficult discussion in the post-1995 RFMO negotiations.

1. New members, “real interest” and allocation of fishing opportunities

52. The Agreement provides for addressing the interests of new members as a core function of RFMOs.⁴⁶ Article 11 sets out criteria to be taken into account in determining the nature and extent of participatory rights for new members and article 8.3 provides that States having a “real interest” in a fishery may become members of the relevant RFMO.

53. As has been recognized for some years, a key challenge is for cooperation to bring as many States as possible within the framework of RFMOs, recognizing the legitimate aspirations of new entrants to engage in fishing on the high seas without increasing the total fishing for stocks which are often fully exploited and fully allocated among existing RFMO members. The underlying issue is the allocation of opportunities to fish for high seas stocks as a shared economic resource. The matter is complicated by the need to recognize the requirements of developing States who may not previously have had the capacity to fish for high seas stocks, and the need to avoid adding to existing overcapacity in the fishing industry.⁴⁷

54. In most pre-1995 RFMOs, decisions on allocations have often been based on historical catch records, even though that consideration is not specifically mentioned in either UNCLOS or the Agreement. That approach has been maintained in some schemes adopted since 1995.

55. The following offers a brief review of approaches taken and suggested:⁴⁸

(a) NAFO is open to new members with the proviso that stocks are fully allocated and new allocations will only be available for previously unallocated stocks when those stocks recover sufficiently to allow allocations. The allocation criteria for such stocks are under discussion, with the article 11 criteria regarded as non-exhaustive;

(b) ICCAT is open to new members and in 2001 agreed new allocation criteria for all its stocks. The criteria take into account article 11 and other elements relevant to the ICCAT situation, including historical catch records, but without prioritizing the various criteria;

(c) I-ATTC limits fishing in the convention area to vessels on its purse seine register rather than by allocations, so new members would have to access these vessels by purchase or transfer;

(d) NEAFC does not have allocation criteria and is planning discussion of new members, who are currently admitted by majority vote of current members;

(e) CCAMLR, IOTC and GFCM do not have allocation criteria and are open to new members;

(f) CCSBT accepts new members by agreement among existing members. Allocations for new members are by agreement, taking into account historical catch and (unspecified) other factors;

(g) WCPFC and SEAFO allocation criteria include those in article 11. WCPFC new members are admitted by consensus vote. SEAFO is open to new members without a vote;

(h) The Galapagos Agreement does not deal with allocations. It will be open to new members after its entry into force, which is pending ratification by the founding coastal States.

56. The key point is that the Agreement does not resolve the new entrant and allocation problem for States Parties (for example, a real interest is not defined). It offers criteria to help States, acting through RFMOs, to find practical solutions to the problem. Some progress has been made in adopting new approaches, but allocation decisions increasingly also require an element of political decision, especially when requiring RFMO members who may have made significant investments in management of the fishery concerned, to accept reduced returns from that fishery.

2. Compliance and enforcement

57. Part VI of the Agreement includes compliance and enforcement measures for implementation through RFMOs. The primary role of flag States in this area and concerns at high levels of IUU fishing have been noted. Probably the most controversial issue in the negotiation of the Agreement was the boarding and inspection regime provided for by articles 20 to 22, notwithstanding that the provisions maintain the primary role of the flag State. In the survey, only four out of nine parties and one out of seven non-parties who responded to the question have measures in place fully to implement article 20, with particular gaps both on granting permissions for inspection at sea by third States or otherwise cooperating with investigations by third States into alleged violations. More than one non-party respondent to the survey indicated these provisions as a key constraint to implementation of the Agreement. Suggested solutions included the adoption of boarding and inspection schemes tailored to the specific situation of each RFMO and concentration on ensuring that other methods to achieve compliance operate properly. The provision in article 21.15 for an “alternative mechanism” to that described in the Agreement may be relevant in this regard, although there have been differing views in some RFMOs about what constitutes an alternative mechanism.

58. Notably, several examples of practice reflect the suggested solutions. For example, tailored boarding and inspection schemes have been adopted by NAFO and NEAFC. Progress has also been made in other areas. As seen in section II above, greater use is being made of VMS, even if still insufficient. Flag State willingness to participate in observer schemes, for example, through the I-ATTC 100 per cent observer coverage on purse seine vessels, also demonstrates a greater overall commitment to transparency, even in cases where observers have no competence on compliance and enforcement.

59. As noted in paragraphs 28 and 29 above, port State inspection as provided for by article 23 of the Agreement is also playing an increasingly important role. The CCAMLR and ICCAT catch documentation schemes use inspections in ports. The sanction under the scheme is prohibition of the import of undocumented catch, a trade-related measure. Although the Agreement does not specifically refer to trade measures, these are among approaches adopted by States to deter fishing activities that undermine RFMO measures and provided for by articles 17.4 and 33.2.

60. At the institutional level, RFMOs are also increasingly making use of internal review as an incentive to compliance, for example through compliance committees. Records of compliance also feature, for example, in the new ICCAT allocation criteria.

61. All of the approaches above are also reflected in the WCPFC and SEAFO post-1995 instruments, offering the prospect of further progress. Overall, however, it is difficult to avoid the conclusion that much greater coverage of schemes such as those outlined is necessary to improve implementation of the Agreement. Efforts in that area are likely to complement those under the IPOA on IUU fishing. It should also be noted that the most comprehensive current compliance schemes tend to be in RFMOs that include developed States among coastal States. For developing States, lack of resources is a major constraint (see section V below).

F. RFMO institutional issues

1. Decision-making and cooperation to prevent disputes

62. The Agreement does not prescribe any specific method for decision-making in RFMOs, but article 10 (j) requires that decision-making procedures should facilitate the adoption of conservation and management measures in a timely and effective manner. Decision-making is also particularly relevant to the adoption of compatible measures applicable to the high seas and EEZs, in accordance with article 7.3. Where such agreements are not achieved in a reasonable period of time, article 7.4 specifically provides for resort to procedures for the settlement of disputes under Part VIII of the Agreement.

63. In responses to the survey, almost all pre-1995 RFMOs judged their procedures to meet the requirements of the Agreement, and none has made any changes to those procedures. The importance of States Parties to the Agreement agreeing to be bound by measures adopted in RFMOs is nevertheless likely to increase with time as more Parties to the Agreement address more difficult issues related to implementation of the Agreement. The sensitivity surrounding decision-making procedures was illustrated in the negotiation of the WCPFC and SEAFO conventions. The outcomes illustrate the elements of the challenges faced.

64. The SEAFO Convention provides for consensus-based decision-making, but allows, subject to certain conditions, a member subsequently to declare that it does not accept a measure. Notwithstanding the conditions, which include review procedures, that approach recalls in part the possibility of objection under pre-1995 RFMOs such as NAFO and NEAFC. The WCPFC Convention provides for qualified majority voting on most issues, but not allocation. There is no procedure for non-acceptance or objection to a decision once taken (except for on grounds of discrimination or incompatibility with the WCPFC Convention). The qualified majority is a three-fourths majority, which must include a three-fourths majority of coastal States.

65. The willingness to enter into binding commitments to implement measures agreed within RFMOs is a key indicator of willingness to cooperate in accordance with the Agreement. That willingness may prove more important than some details of decision-making procedures. Arguably however, non-acceptance of measures,

particularly those related to levels of fishing effort, are likely to weaken rather than strengthen RFMOs.

66. Failure to reach decisions could become the basis for a dispute under Part VIII of the Agreement. Article 29 of the Agreement provides for RFMOs to play a role here by establishing ad hoc expert panels to consider disputes of a technical nature. The WCPFC and SEAFO conventions both provide for such a panel. The SEAFO Convention explicitly tasks its panel with matters related to non-acceptance of agreed measures (see also discussion of Part VIII below).

2. Transparency and non-State actors

67. All RFMO respondents to the survey reported that measures had been taken to meet the transparency requirements of article 12⁴⁹ and to provide for cooperation with relevant national agencies and industries in accordance with article 10 (l) of the Agreement. It is difficult to base a firm conclusion on self-assessment, but it is clear that non-State actors, including non-governmental organizations (NGOs) representing both conservation and industry interests are playing an increasingly influential role, directly and through States, in support of the work of RFMOs and implementation of the Agreement.

68. Among NGO responses to the survey, emphasis was put on improved port and flag State controls to ensure compliance with RFMO measures, with suggestions for incentives to fishers in order to promote compliance. There was also agreement on the need to strengthen RFMOs, and coordination among them. One NGO reported successful monitoring and boycotting of vessels engaged in IUU fishing.

3. Cooperation and coordination among RFMOs

69. Cooperation and coordination among RFMOs, especially those with competence for related stocks and/or overlapping geographic competence, should enhance implementation of the Agreement, with potential resource savings. There is particular scope for harmonized approaches on data collection and, where appropriate, monitoring and enforcement, and for mutual assistance in these and other areas. Existing examples include some cooperation among North Atlantic RFMOs and mutual observer arrangements between I-ATTC and the South Pacific Permanent Commission (CPPS). The WCPFC and SEAFO conventions also provide for cooperation and coordination. More widely, several new Internet-based initiatives may also enhance information-sharing, among RFMOs and other actors.⁵⁰

70. At the global level, since 1999 FAO has hosted biannual meetings of RFMOs, in addition to existing FAO expert forums in which RFMO experts may meet. This meeting has the advantage of informality, with representatives of RFMO secretariats able to exchange views and experience without any constraints imposed by the members of their organizations. One important area discussed has been scope to establish performance indicators for RFMOs. RFMO cooperation with the United Nations Environment Programme (UNEP) Regional Seas Programme has also been discussed.⁵¹

71. To date, however, there is little indication that any of the above forums have specifically considered implementation of the Agreement, or made concrete recommendations on action to be taken to that end. There may be scope, for example, building on the existing FAO meeting of RFMOs and consideration of

fisheries issues by the United Nations General Assembly, to establish a more targeted agenda through which RFMOs could work together on implementation of the Agreement. Such an approach would not bind member States of RFMOs, but could facilitate subsequent consideration of relevant issues within RFMOs. That sort of cooperation could form part of performance indicators for RFMOs and could support systematic checking of new measures against provision of the Agreement, as suggested in paragraph 50 above.

72. The need for improved cooperation and coordination also applies at the level of States. In some cases, different parts of national administrations are responsible for different RFMOs, for the FAO Committee on Fisheries (COFI) and United Nations General Assembly debates and/or for the other multilateral bodies reviewed in section VI below. Poor national level coordination can lead to missed opportunities. One example is where different RFMOs are seeking solutions to related issues. Progress can be delayed if there is insufficient national coordination on details of each discussion, and sometimes by excessive concern not to reach an agreement which could pre-empt the outcome of related discussion elsewhere.⁵²

4. Costs of RFMOs

73. Another issue for all RFMOs and their members is the cost of funding the organization and implementing agreed measures. This is steadily increasing with the widening scope and demands made of RFMOs. In most RFMOs, member State contributions are based on a basic membership fee and a scale related to actual fishing activity. In some RFMOs special provision is made to take account of the economic status of developing State members. These are reviewed further in section VI below.

74. As well as through the collection of membership fees, the funding of RFMOs is likely to depend on national- or regional-level recovery of the costs of implementing conservation and management measures. Section II above considered the possibility of coastal States recovering the costs of measures adopted in EEZs through income from fisheries access agreements.

IV. Peaceful settlement of disputes

75. Part VIII of the Agreement, in particular article 30, provides for the application of the UNCLOS Part XV compulsory dispute settlement mechanism to the Agreement, including for non-parties to UNCLOS who are Parties to the Agreement.⁵³ In this context, the FAO-maintained list of fisheries experts nominated in accordance with annex VIII of UNCLOS is particularly important.⁵⁴ There have been no proceedings under Part VIII since the entry into force of the Agreement, so there is little scope for substantive assessment. It is, however, worth noting that two sets of proceedings relevant to stocks covered by the Agreement have been brought since its adoption in 1995, possibly offering pointers for the future.⁵⁵

V. Part VII of the Agreement: requirements of developing States

A. Introduction and relevant provisions of the Agreement

76. As specifically requested by paragraph 8 of General Assembly resolution 56/13 and paragraph 13 of resolution 57/143, the present section considers current activities under and in support of the principles contained in Part VII of Agreement regarding the requirements of developing States. Account is also taken of other provisions of the Agreement relating to developing States.⁵⁶

77. Few, if any, major programmes of bilateral or multilateral assistance established or operating since the adoption of the Agreement specifically focus on its implementation. That is, in part, because many provisions in Part VII are also relevant to development of capacity to conserve and manage coastal fisheries, often a higher priority for developing States and in most cases also a prerequisite for management of stocks covered by the Agreement.

78. Activities related to Part VII fall into three main categories:

(a) Building capacity to conserve and manage stocks. This includes measures which take account of developing States and fishers with particular needs, identified in article 24 (b), and development of national and high seas fisheries, provided for by article 25.1 (a)-(b). Relevant measures include all categories of financial, human and technical assistance in article 25.2-3;

(b) Facilitation of participation in RFMOs and arrangements, including costs associated with establishing new, or strengthening existing RFMOs or arrangements, provided for by Article 25.1(c) and Article 26.2 of the Agreement;

(c) Assistance with costs associated with the settlement of disputes, provided for by Article 24.2.

B. Overview of existing activities relevant to Part VII

1. Building capacity to conserve and manage stocks

79. Assistance to developing States in this area is generally linked to wider capacity development in national and regional fisheries, with the priority noted above for coastal fisheries. FAO has been the lead United Nations specialized agency in this area, working alone or with donors.

80. The FAO response to the survey was that no specific new programmes have been established as a result of the adoption of the Agreement, but that the Agreement has helped to strengthen existing programmes. Key programmes include work to promote implementation of the Code of Conduct⁵⁷ and work through RFMOs established under article VI of the FAO Convention, which are funded by donors through the FAO regular budget. The FAO Legal Office also provides advice on request on matters related to the Agreement.

81. Details of the FAO bodies and reports on their work are available on the FAO web site. Although part of the wider picture of international fisheries assistance,

there is no indication that those bodies have made any direct contribution to implementation of the Agreement.⁵⁸

82. FAO has also provided inputs to fisheries-related training under the Train-Sea-Coast programme funded by the Global Environment Facility (GEF) and coordinated by DOALOS. Fisheries training under the programme include the South Pacific Programme and the Gulf of Guinea Programme, which specifically targets women fish workers.⁵⁹ Current Train-Sea-Coast funding is due to finish at the end of 2003.

83. Taking examples from FAO work and other regional initiatives, and based on all sources used in the present report, the following is a brief regional survey of assistance:⁶⁰

(a) **South Pacific.** Activities of the Forum Fisheries Agency include regional MCS, including coordinated aerial surveillance, and regional observer and VMS programmes. FFA has contributed to a regional approach to develop the fishing capacity for highly migratory fish stocks among the Pacific Island States as an alternative to generating revenue from access agreements. FAO formally contributes to FFA work. Other major donors include Australia and New Zealand;

(b) **Caribbean.** As noted in paragraph 34 above, CRFM was established in 2002, primarily to deal with fishery resource and management information and advice. Regional assistance includes FAO cooperation through the Western Central Atlantic Fisheries Commission (WECAFC); a FAO Technical Cooperation Programme Project on expanding domestic fisheries for large pelagic species; and the 1999-2005 EC Caribbean Forum (CARIFORUM) project. In 1997 FAO and the Organization of Caribbean States developed a model harmonized high seas fishing law that has been widely implemented. Notwithstanding these initiatives, few Caribbean States have developed national capacity to fish for stocks under the Agreement, in particular highly migratory fish stocks, which requires specialized gear;⁶¹

(c) **Southern Africa.** SADC adopted a Protocol on Fisheries in 2001 (not yet in force), which primarily addresses code of conduct issues. Related initiatives include MCS for Atlantic and Indian Ocean coastal areas of SADC member States, with the European Community and the United Kingdom among bilateral donors, and FAO contributing technical assistance. Norway also provides assistance with stock assessment to some SADC members;

(d) **South Eastern Pacific.** The CPPS provides a well-established forum for regional cooperation. CPPS has contributed to the development of coastal State fisheries for certain straddling stocks, but there is little indication of active steps to assess scope for highly migratory stocks;

(e) **South and East Asia.** Very little information is available about projects related to stocks covered by the Agreement among Asian coastal States. As noted in paragraph 34 above, APFIC initiatives have been very limited, with the focus primarily on coastal fisheries.

84. In all developing regions, targeted assistance also forms a part of access arrangements. The European Community, for example, has 21 such arrangements with third countries. Targeted assistance is increasingly prominent under these arrangements, which include funding from the fishing industry. Although not

explicitly presented as such, targeted assistance in areas such as training and MCS contribute to achieving the objectives of the Agreement.

85. Some of the above-mentioned programmes, for example under FFA, specifically focus on enhancing the capacity of developing States to harvest stocks covered by the Agreement. In other areas, less work has been done to establish the extent of those stocks, hence making it difficult for developing States to assess potential returns from investment in capacity to harvest those stocks.

86. Section VI below covers fisheries development-related work by non-fisheries agencies.

2. Facilitating participation in, and strengthening of, existing RFMOs

87. This is an area where assistance directly linked to implementation of the Agreement has been provided. The following examples draw on responses to the survey, and may not be exhaustive.

88. For the post-1995 RFMOs, Australia and New Zealand (through FFA) have been among donors helping with the costs of establishing WCPFC. China, the Republic of Korea, French Polynesia, Taiwan Province of China, Papua New Guinea and the United States of America have also supported WCPFC work. Norway has contributed to the costs of the SEAFO interim secretariat and the SWIOFC negotiations. The United States has also provided assistance to SEAFO. Notably, the WCPFC Convention itself also provides for the establishment of a fund to help developing States Parties in the future.

89. In the case of established RFMOs, membership and travel costs for some developing States have been met under bilateral assistance programmes. An example is assistance provided by the European Community under bilateral fisheries agreements to cover costs of participation in ICCAT. On measures to strengthen RFMOs, developed State participants in ICCAT assisted with some costs associated with negotiation of the new allocation criteria outlined in paragraph 55 above.

90. As already indicated, the FAO article VI bodies are funded through the FAO regular budget. It is not clear whether any of this funding has specifically been targeted at strengthening these bodies in accordance with the Agreement.

91. One other indirect way in which developing State participation in RFMOs is facilitated is through assessed contributions to the budget of the organizations. Among RFMOs with significant membership from developing States, the IOTC, WCPFC and SEAFO conventions provide for schemes to take account of the economic status of members. ICCAT has adopted a Protocol to do the same thing,⁶² and I-ATTC takes a similar approach in its financial regulations.

3. Assistance with the costs associated with the settlement of disputes

92. There is no record of any assistance provided in this area, which in principle could include disputes of a technical nature under article 29. As already noted, no disputes have arisen under the Agreement since its entry into force. One source for such assistance, for UNCLOS Parties, is the Trust Fund established in 2000 for the International Tribunal for the Law of the Sea (ITLOS). As at April 2003, no requests had been made for the limited funds so far deposited in that Fund.

C. Proposal for a Part VII trust fund

1. Suggested priorities for allocation of funds

93. The General Assembly, in paragraphs 13 and 14 of its resolution 57/143, proposed the establishment of a voluntary trust fund for developing States Parties to the Agreement, provided for by article 26.1. In paragraph 15 of the same resolution, the Assembly urged States Parties to develop detailed terms of reference for a Part VII trust fund and suggested that the following should be considered for early implementation through the fund:

(a) Facilitating the participation of developing States parties in relevant regional and subregional fisheries management organizations and arrangements;

(b) Assisting with travel costs associated with the participation of developing States parties in meetings of relevant global organizations;

(c) Supporting ongoing and future negotiations to establish new regional or subregional fisheries management organizations and arrangements in areas where such bodies were not currently in place, and to strengthen existing subregional and regional fisheries management organizations and arrangements;

(d) Building capacity for activities in key areas such as monitoring, control and surveillance, data collection and scientific research;

(e) Exchanging information and experience on the implementation of the Agreement;

(f) Assisting with human resources development and technical assistance.

94. COFI has approved FAO participation in the development and management of the fund.⁶³ In what follows, suggestions (a)-(f) are reviewed according to the activity groups introduced in paragraph 78 above.

(a) Facilitating participation in and strengthening of existing RFMOs

95. Activities (a)-(c) fall under this heading. The key role of RFMOs in implementation of the Agreement, makes this area of assistance the first priority. The basic costs of participation in an RFMO include travel costs for delegations, including technical experts, to meetings of RFMOs, and contributions to RFMO budgets. In some cases, there may also be training needs.

96. In order to enhance the value of new funding in this area as a part of implementation of the Agreement, two important prerequisites are the commitment of the RFMO concerned and the developing State Party recipient to implementation of the Agreement. Preliminary steps towards demonstrating such commitment may include reference to the Agreement in RFMO work programmes, and in States Parties' national fisheries management plans.

(b) Building capacity to conserve and manage stocks

97. Activities (d)-(f) fall under this heading. Under this second priority area, the emphasis should be on funding to build up capacity at the regional level, where, for example, joint work on regional data gathering, MCS (including VMS) and human resources development would be likely to offer the greatest returns on investment.⁵⁰

Such an approach could take account of successful examples of existing regional assistance, for example, that channelled through FFA and SADC.

98. One issue for funding at the regional level is to identify suitable regional mechanisms enjoying the full commitment of participating developing States. The FFA and SADC examples both illustrate the importance of a regional framework agreed at the intergovernmental level, which provides a clear structure into which to channel assistance.⁶⁴

(c) Assistance with the costs associated with the settlement of disputes

99. Although not identified as a priority by Assembly resolution 57/143,⁶⁵ article 26.2 specifically provides for assistance with costs associated with the settlement of disputes, so this may be a useful addition to the terms for the Trust Fund. Such a use of the Fund could complement the existing ITLOS Trust Fund, in particular for parties to the Agreement that are not parties to UNCLOS. It might also be available for costs related to ad hoc expert panels established in accordance with article 29 of the Agreement, hence also contributing to the strengthening of RFMOs.

(d) Other uses for the Trust Fund

100. Part VII includes assistance with national fisheries management, also provided for by article 3.3, so where there is a clear objective related to the Agreement, this should not be excluded from the terms of reference for the Fund, even if regional projects are a higher priority. Much will depend on the size of the Fund. As of March 2003, few contributions had been made to the UNCLOS Trust Funds. An alternative, or complementary approach to use of the Fund at the national level could be better coordination with other programmes so that objectives related to the Agreement are incorporated where appropriate (see also paras. 116-119 below).

101. In many cases, a preliminary to national capacity-building to develop fisheries for stocks under the Agreement will also be an assessment of likely returns on investment. This is particularly important given the costs involved in developing capacity to fish for high seas stocks and realistic expectations of actual harvests of often overfished stocks, even where allocation mechanisms make proper provision for developing State access to resources. It is important that States have the necessary information to decide whether to invest in direct involvement in the fishery, or otherwise generate resources from fishing activities, for example, through properly costed licensing arrangements and cooperation with other States.

2. Management of a Part VII trust fund

102. In addition to establishing priority areas for use of a Trust Fund, the terms of reference for such a Fund should also address management of the Fund. Elements for effective management should include, inter alia:

(a) Responsibility for administration of the Fund. It is proposed that DOALOS and FAO have shared responsibility;

(b) Publicity for the Fund. Effective publicity is essential both to attract donors and to inform potential beneficiaries. The DOALOS and FAO web sites should carry details of the Fund, including details of how to make applications. Promotion of the Fund at a regional level should also be explored, for example through relevant RFMOs;

(c) Coordination with other funding mechanisms. Before any disbursement under the Fund, DOALOS and FAO should have a joint role to check for any existing alternative sources of funding, and against any duplication with other assistance programmes. Relevant RFMOs may also be invited to comment on proposals in the region, especially where they have their own funds for assistance, as is planned in WCPFC. Such an approach may also reveal ways to enhance the value of projects under the Fund, through linkages with other initiatives. Coordination with other United Nations bodies is also relevant in this area, and is considered further in section VI below;

(d) Monitoring and follow-up. As well as an annual statement by administrators of the Fund, there should be a commitment from recipients to provide follow-up assessment of projects funded.

VI. Impact of entry into force of the Agreement on related or proposed international instruments

A. Overview of related work in the United Nations system and other international bodies

103. Article 24.1 provides for a wide variety of actors in the United Nations system to contribute to implementation of the Agreement with respect to developing States, and names in particular the United Nations Development Programme (UNDP), FAO, the Global Environment Facility and the Commission on Sustainable Development. Other United Nations bodies also have a role that goes beyond the developing State context. The role of FAO was discussed in section V above. Drawing on responses to the survey and other sources, the present section provides a brief summary of the relevant work of other international bodies.

104. As with assistance reviewed in section VI, almost all of what follows contributes to implementation of the Agreement at the same time as addressing wider aspects of fisheries management, with few specific initiatives linked to the Agreement.⁶⁶ Only two out of five survey respondents from the bodies named in article 24.1 saw the Agreement as having had an impact on their programmes.

Global Environment Facility

105. A range of existing and planned GEF-funded projects on biodiversity and international waters, are relevant to implementation of ecosystem and other environment-related aspects of the Agreement. GEF acts as the financial mechanism of the Convention on Biodiversity, with UNDP, UNEP and the World Bank acting as the GEF implementing agencies.

106. Projects include the Strategic Action Programme (SAP) of the Pacific small island developing States, which includes inputs to WCPFC. GEF also has projects in the Caspian and Baltic Seas and a major programme on the Benguela Current Large Marine Ecosystem (LME). LME is an example of a complex management regime where fisheries, pollution, biodiversity, impact of mining and coastal zone management are all involved. The LME project plan makes specific reference to the role of SEAFO as the relevant RFMO in the region. GEF also has a proposal currently under consideration for the South-West Indian Ocean, with relevance to

work to establish SWIOFC. The GEF concept for a strategic partnership for a sustainable fisheries investment fund for Sub-Saharan Africa includes further LME projects relating to the Canary Current (West Africa), the Agulhas Current (South East Africa) and the Somali Current (East Africa).

107. GEF has also contributed to the DOALOS Train-Sea-Coast project.⁶⁷

United Nations Development Programme (UNDP)

108. The UNDP Strategic Initiative for Ocean and Coastal Management (SIOCAM) included some fisheries projects between 1996 and 2000. Current UNDP activity is through GEF-funded projects.

Commission on Sustainable Development

109. The work of the Commission on oceans under Agenda 21 has been based on the UNCLOS framework, but not specifically on the Agreement. The references in the World Summit on Sustainable Development Plan of Action to the Agreement may form a basis for future Commission interest, as part of wider United Nations coordination on the Agreement.

UNEP Regional Seas Programme

110. The UNEP Regional Seas Programme offers scope for complementarity with approaches to the precautionary approach and ecosystem management under the Agreement. Some initial work has been done on cooperation between the Programme and relevant RFMOs.⁶⁸ This is an area with potential for further development. The regional seas conventions themselves do not generally make specific reference to fisheries, although for example, the 2002 Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific explicitly mentions fisheries.

Secretariat of the Convention on Biological Biodiversity

111. Several decisions of the Conference of the Parties to the Convention on Biological Diversity, including the Jakarta Mandate, have requested work on unsustainable fishing practices.⁶⁹ Links to implementation of the Agreement have not been explicit. The main areas of common interest are the precautionary approach and ecosystem management. Preparations for the 2004 Conference of the Parties have considered more specific measures such as closed seasons, regulation of fishing gear and practices and stock restoration programmes.

UNESCO International Oceanographic Commission

112. Again, no specific initiatives directly related to implementation of the Agreement, although IOC work on ecosystems offers relevant background for measures adopted under the Agreement.

World Bank

113. The World Bank has operated the Global Trust Fund for Sustainable Fisheries since September 2001. The Fund focuses on sustainable fisheries for poverty reduction in coastal fisheries, not stocks covered by the Agreement, although some projects have included elements relevant to articles 24 and 25. These include MCS

and data-capacity development, and assistance to subsistence and small-scale fishers and women fish workers. The World Bank also collaborated with FAO to produce a guide to Legislating for Sustainable Fisheries, including national implementation of the Agreement.⁷⁰

Convention on Illegal Trade in Endangered Species

114. The CITES Parties have given attention to some stocks covered by the Agreement. Certain shark species have been CITES listed. In 2002 a proposal was made (later withdrawn) to list Patagonian and Antarctic toothfish. FAO and CITES are reviewing approaches to consultation on such matters.⁷¹

World Trade Organization

115. There are no specific WTO projects related to the Agreement. Two relevant areas, however, are FAO work on fisheries subsidies in response to the specific request for clarity on the matter in the Declaration from the fourth WTO Ministerial Conference, and the importance of WTO consistency in trade measures adopted to promote compliance with the Agreement. DOALOS has also contributed information on the Agreement to a WTO overview of compliance and dispute settlement provisions in multilateral environmental agreements.⁷²

B. Improving international coordination

116. The present report has already considered coordination and cooperation at the national level, among coastal States and among RFMOs. Similar principles apply to global, regional and subregional level coordination involving actors within the United Nations system.

117. In the case of FAO, the complementarity of the Agreement with FAO instruments already offers scope for more systematic consideration of implementation of the Agreement, for example, as part of the COFI agenda. It is notable that very few of the relevant FAO development projects reviewed in paragraphs 80 to 83 above made explicit links to implementation of the Agreement. The same applies to ongoing FAO-IMO collaboration on port State controls.⁷³

118. The same applies to coordination elsewhere in the United Nations system. As the overview above illustrates, there is no systematic approach to identifying the ways in which projects contribute to meeting the objectives of the Agreement, even though many projects, for example, marine environment and ecosystem issues, complement the approach taken in the Agreement.

119. A more systematic approach, perhaps beginning with more active information sharing through nominated contact points in each organization, should offer mutual benefits. For example, illustrating linkages to the Agreement should add to the measurable outputs of non-fisheries initiatives and facilitate information sharing and collaboration on projects. Explicit reference to the Agreement would also facilitate informal “auditing” for future reviews of implementation of the Agreement, and assist effective administration of the proposed Part VII Trust Fund. This sort of approach at the United Nations level should in turn feed back into and facilitate cooperation and coordination with and among RFMOs, and at the level of States.

VII. Conclusions and recommendations

120. The key conclusions and recommendations in the present report are as follows:

- **Status of the Agreement:** Achieving full implementation of the integrated approach to conservation and management and binding obligations established by the Agreement, requires that more States ratify or accede to the Agreement. Although progress has been made and the Agreement is increasingly regarded as a benchmark for best international practice, implementation of provisions of the Agreement remains selective (para. 7).
- **The role of coastal States:** Despite good progress, coastal States are not yet making full use of their sovereign rights in order to realize the opportunities provided by the Agreement and to contribute to its full implementation. For developing coastal States in particular, capacity is a key issue, which could be addressed through Part VII and through greater recovery of conservation and management costs through the terms for access agreements (para. 18).
- **Cooperation among adjacent coastal States:** Although not directly regulated by the Agreement, cooperation between adjacent coastal States, demonstrated by several successful examples, is often a prerequisite for effective cooperation with high seas fishing States (paras. 20-21).
- **The role of flag States:** Many flag States have measures in place to implement their duties, at a regional and global level, but overall flag State implementation is not sufficiently effective to achieve the objectives of the Agreement and of related instruments such as the IPOA on IUU fishing. Wider acceptance and implementation of the binding provisions of the Agreement would provide a key tool to help deal with IUU fishing (para. 27).
- **The role of port States:** The powers of inspection available to port States offer a powerful tool, still relatively unexploited, to promote implementation of the Agreement. There is scope to expand existing port control schemes, including through adoption of trade-related measures, as part of integrated and comprehensive RFMO approaches to promoting compliance with agreed conservation and management measures, drawing on collaboration between FAO and IMO (paras. 28-29).
- **Global coverage of stocks by RFMOs:** Existing coverage is reasonably good, with only a relatively small number of potential gaps. The eventual coverage of the proposed SWIOFC is a current key issue (paras. 34 and 38). State practice also indicates a possible willingness to extend provisions of the Agreement to deeper-water discrete high seas stocks (para. 39).
- **Strengthening RFMOs:** Two instruments adopted since 1995 to establish new RFMOs, and a third one in preparation, widely implement provisions of the Agreement. One pre-1995 RFMO is revising its convention along similar lines (para. 44). Where the clarity provided by new treaty-based obligations is not available, especially in pre-1995 RFMOs, a systematic approach to assess new conservation and management measures for

conformity with the Agreement could help gradual implementation and identification of particular areas of difficulty (para. 50).

RFMOs are making good progress in implementation of the Agreement. Areas for improvement include ecosystem-related measures (para. 47); better collection and management of data, including through greater use of VMS (para. 49); and better enforcement (para. 61). RFMOs face particular challenges to deal with new members and the allocation of fishing opportunities, and to ensure effective decision-making procedures. The Agreement offers guidance but achieving solutions will require effective political commitment, including coordinating policy decisions at the national and regional level (paras. 56 and 65).

The provisions of the Agreement to promote the peaceful settlement of disputes offer an as yet unused, but important element of the Agreement, including for RFMOs to promote the settlement of technical disputes (paras. 66 and 75).

Some non-State actors, including representatives of both conservation and industry interests, are contributing to implementation of the Agreement (paras. 67-68).

- **Requirements of developing States (Part VII of the Agreement):** There has been support for the establishment of new RFMOs, but few examples of other fisheries assistance directly targeted at implementation of the Agreement. This is often because a higher priority is rightly given to assistance with fisheries management in areas under national jurisdiction, which is usually a prerequisite to effective implementation of the Agreement (paras. 77 and 87).
- **Priorities for a Part VII Trust Fund:** These should be to assist developing State parties to the Agreement, in the following order of priority: (a) to participate fully in RFMOs committed to implementation of the Agreement, and strengthening of those RFMOs; (b) to implement measures adopted by RFMOs, with an emphasis on measures implemented at a regional level which strengthen the capacity of developing States to implement the Agreement; (c) to meet the costs of dispute settlement, taking account of the existing ITLOS Fund. Assistance in other areas would be subject to the size of an eventual fund, coordination with national fisheries management plans and other sources of funding (paras. 95-99).

The Fund should be jointly administered by DOALOS and FAO, with procedures to ensure effective publicity for donors and recipients; coordination with related United Nations and other international assistance, and monitoring of results achieved (para. 102).

- **Cooperation and coordination:** There is scope for improved cooperation and coordination at the level of States (para. 72), among RFMOs and at the United Nations inter-agency level. Among RFMOs, some progress has been made, but existing initiatives need to address implementation of the Agreement in a more specific and systematic way. There may be scope to expand the role and agenda of the existing FAO biannual meeting of RFMOs (para. 71). At the United Nations level, there is scope in particular

for FAO, GEF, CSD and UNDP (including as a GEF implementing agency) to work with DOALOS in order to make linkages between the Agreement existing and proposed programmes more explicit (para. 119). Cooperation between the UNEP Regional Seas Programme and RFMOs could also be developed further (para. 110).

- **Procedural issues:** For all coordination, nomination of contact points for formal and information communications related to the Agreement at the level of States, RFMOs and relevant United Nations bodies would help facilitate cooperation and coordination (paras. 118-119).

States requested the survey of implementation of the Agreement, but many did not respond to it. One reason may be the number of surveys of fisheries issues, including those by FAO. There may be value in collaboration on single United Nations biannual questionnaire covering all global fisheries instruments, standardized to allow clear tabulation of responses and to reflect views of States who do not accept all the instruments (para. 5).

Notes

¹ The European Community was surveyed based on its status under art. 47. In the present report, references to implementation by States include the EC in its competence over matters governed by the Agreement.

² The full text of the Agreement is available on the DOALOS web site and in *International Fisheries Instruments with Index* (United Nations publication, Sales No. E.98.V.11), sect. I. For the status of the Agreement, see annex I below and the DOALOS web site. The report of the States Parties meeting is contained in document ICSP/UNFSA/REP.INF.1 on the DOALOS web site at http://www.un.org/Depts/los/convention_agreements/FishStocksMeetings/UNFSTA_ICSP2002_DraftRep.pdf.

³ Most recently General Assembly resolution 57/143. See also the 2002 report on the work of the Open-ended Informal Consultative Process, A/57/80, para. 41.

⁴ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 20 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, sect. 4, para. 30 on sustainable fisheries, and sect. 7, para. 58, on small island developing States, including fisheries: http://www.johannesburgsummit.org/html/documents/summit_docs/131302_wssd_report_reissued.pdf.

⁵ FAO, 2002, p. 49. The instruments are the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the 1995 FAO Code of Conduct for Responsible Fisheries. The Compliance Agreement includes provisions on submission to FAO of data on high seas fishing. A small number of States chose to submit such data in advance of entry into force of the Agreement. The Agreement entered into force on 24 April 2003.

⁶ See the IPOA on IUU fishing, para. 11, and the IPOA for the Management of Fishing Capacity, para. 29. Available on the FAO Fisheries web site.

⁷ See General Assembly resolution 56/13, para. 8, and resolution 57/143, paras. 9, 13-15 and 19. For record of meeting of parties, see note 2.

⁸ The background material is research by Institut du Développement Durable et des Ressources Aquatiques (IDDRA), in the form of a long and short paper, and six regional studies, available at <http://www.onefish.org/servlet/CDSServlet?status=ND0xMDcwLjE0Njc5MiY2MT1kb2N1b>

WVudHMmNjU9aW5mbw~~ and by the Marine Resources Assessment Group (MRAG) in the form of a long “source document” and short paper (to be published).

⁹ The 2001 Convention on the Conservation and Management of Fisheries Resources in the South East Atlantic Ocean entered into force on 13 April 2003.

¹⁰ See arts. 3 and 4 of the Agreement.

¹¹ See para. 41 of the present report.

¹² See annex II.

¹³ Arts. 5, 6 and 7 respectively, of the Agreement.

¹⁴ Most conditions in art. 64.2 of UNCLOS are reflected in the Agreement. The exceptions are arts. 64.2 (h)-(j), on landings, joint ventures and capacity development, not directly regulated by the Agreement.

¹⁵ See also note 37.

¹⁶ Article 7 of the Code covers fisheries management plans. See report on progress in the implementation of the Code, COFI/2003/3/Rev.1, paras. 22-30. Of 102 States responding to FAO, 51 reported that fishing in EEZs (including third-country EEZs) is properly authorized and 39 partially authorized. See also suggested action on constraints on implementation of the Code. See COFI/2003/3/Rev.1, para. 85 and annex, table 9.

¹⁷ Little data is available on the relative costs of access arrangements and market value of catches, but there may be scope for adjustments to take account of the costs of implementation. According to a statement of 23 July 2002 to the United States House of Representatives, the United States Department of State estimates that the \$14 million to \$18 million paid by the United States Government and \$3 million to \$4 million by United States industry for tuna access under the Multilateral Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States compares to \$100 million to \$150 million paid to fishermen for landed catch, and a value to the United States economy between \$250 million and \$400 million. According to the MRAG Source Document, research on European Community access agreements indicates an annual cost of agreements of euro 210 million compared to a total value of landed catch varying around euro 485 million and a total value to the EU economy of euro 944.5 million. Other background material on access agreements includes the Worldwide Fund for Nature Handbook for Negotiating Access Agreements on the web site at <http://www.panda.org/downloads/marine/Fisheries.pdf>.

¹⁸ See also report of the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, 7-10 October 2002, *FAO Fisheries Report*, No. 695.

¹⁹ See also para. 39 of the present report.

²⁰ Inter alia, art. 18 and relevant provisions of arts. 8, 14 and 18-21.

²¹ Arts. 8.4, 18.1 and 17.2, taken together.

²² See annex II, table 1.

²³ For a review of the issue of open registers, see FAO Fisheries Circular 980, FIPL/C980: Fishing vessels operating under open registers and the exercise of flag State responsibilities: information and options.

²⁴ Santiago de Compostela International Conference on IUU Fishing, 25-26 November 2002. Report available at web site <http://www.mapya.es/pesca/pags/ilegal/pdf/conclusions.pdf>. Notably, the conclusions of the conference do not include any reference to the Fish Stocks Agreement.

²⁵ Arguably, full implementation of the Agreement by all States fishing on the high seas would eliminate *illegal* fishing, even if gaps in the coverage of RFMO measures left some fishing *unregulated* or *unreported*. The entry into force of the Compliance Agreement on 24 April 2003

should also complement the Agreement by creating further binding obligations that would help deal with IUU fishing.

²⁶ Article 8.3 of the Code and paras. 52-64 of the IPOA.

²⁷ In its response to the survey, the United States noted that although it had not implemented port State controls under the Agreement, this was due to a general restriction on landings by foreign fishing vessels (with some exceptions from the United States Pacific Territories) and not any difficulty with the principle of port controls. See also para. 58, for details of existing RFMO port control schemes.

²⁸ COFI has recommended a FAO/IMO technical consultation, to include consideration of regional memoranda of understanding, capacity development and a database on regional measures. See *FAO Fisheries Report 702*, para. 24; see also COFI/2003/Inf.8 and IMO FSI 11/11 of 31 January 2003.

²⁹ In a present report, "RFMO" covers the range of mechanisms described by the Agreement in the expression "subregional and regional fisheries management organizations or arrangements".

³⁰ Sources for the table and notes include FAO Fisheries Circular 985 (FIPL/C985): Summary information on the role of international fishery organizations are available on the FAO web site <http://www.fao.org/fi/default.asp>; RFMO area maps are available at <http://www.fao.org/fi/body/figiscom/index.htm>.

³¹ Since 1995, the I-ATTC has also overseen implementation of the Agreement of the International Dolphin Conservation Programme (AIDCP), which also makes specific reference to the Fish Stocks Agreement.

³² Framework Agreement for the Conservation of Living Marine Resources in the High Seas of the South East Pacific (the Galapagos Agreement), art. 2.

³³ See also CPPS web site for background study on the two agreements <http://cpps-int.org/start.htm>.

³⁴ Here, regulatory competence includes competence to make *recommendations* on issues under art. 10.

³⁵ These include FAO Article VI regional fisheries bodies; see also paras. 81-82 of the present report.

³⁶ The distinctions between straddling and highly migratory stocks are significant. Art. 7.1 (a) and (b) of the Agreement make slightly different provisions with respect to each category, in accordance with the distinctions in arts. 63 and 64 of UNCLOS. Annex I of UNCLOS lists highly migratory species. Straddling stocks broadly divide into neritic demersal stocks associated with the continental shelf and small pelagics that may extend out from the shelf. Deeper water resources, which may be straddling and/or may be associated with seamounts include oceanic squid, oceanic horse mackerel, mesopelagic (at depths between 200 m and 1,000 m) stocks, marine turtles, Alaska pollock, pomfrets, Pacific saury and orange roughy/other deep-water stocks. It has been noted that high seas components of some stocks (e.g., oceanic squid in the south-west Atlantic) are often of relatively smaller biomass, which makes actual fishing more attractive in coastal zones, notwithstanding the cost of access arrangements for such fisheries. On debate over the distribution of some straddling and discrete stocks, orange roughy has attracted a lot of attention. (Source: MRAG pp. 3-6.) FAO and the Government of New Zealand are collaborating on a conference on deep seas stocks to take place in December 2003.

³⁷ WCPFC does not cover Pacific saury, which is listed in annex I of UNCLOS.

³⁸ NAFO and NEAFC in principle also cover discrete stocks, but their conventions predate the Agreement and their approach to implementation of the Agreement is under discussion. On PSC, see para. 22. Although not a respondent to the survey, the North Atlantic Salmon Commission, which also deals with anadromous stocks, has also applied the precautionary approach and other measures relevant to the Agreement.

³⁹ CCAMLR scheme for *Dissostichus* (toothfish) and ICCAT schemes for bluefin and bigeye tuna, and swordfish.

⁴⁰ Of the RFMOs in the table, NAFO and SEAFO did not respond.

⁴¹ See also FAO Technical Guidelines: Precautionary Approach to Capture Fisheries and Species Introductions, 1996. On ecosystems, see *FAO Fisheries Report 702*, paras. 85-94. In feedback to FAO on implementation of the Code, 70 per cent of respondents had adopted the precautionary approach, including through a range of ecosystem measures.

⁴² See also art. 10 (d)-(g). In article 10, 4 of the 13 functions of RFMOs cover data-related activities.

⁴³ NEAFC reported that it has implemented real-time transmission of data along these lines.

⁴⁴ Among responses to the survey, IOTC noted the withholding of data by one fishing entity, owing in part to dissatisfaction with terms for participation by fishing entities, an issue addressed by art. 1.3 and 17.3 of the Agreement. Elsewhere, the SEAFO interim Secretariat has had difficulty collecting data in accordance with the Protocol to the SEAFO Convention. In positive feedback, I-ATTC noted the success of generation of data by in-house experts, strengthened by 100 per cent observer coverage on purse seine vessels.

⁴⁵ See also para. 70.

⁴⁶ Art. 10 (i). Art. 10 (b) also provides for agreement on participatory rights as a function of RFMOs.

⁴⁷ See also the IPOA on Management of Fishing Capacity.

⁴⁸ In responses to the survey, some States also illustrated national approaches. For example, Norway reported flexible arrangements for spring herring, including access to the Norwegian EEZ to take account of distribution of mature herring and three-year allocations to ensure stability for commercial interests.

⁴⁹ Detailed RFMO web sites have also added to transparency, and assisted the preparation of the present report. Notwithstanding reported transparency, one RFMO reported that access for NGOs to meetings is not permitted.

⁵⁰ Examples include the International MCS Network <http://imcsnet.org/>. See also COFI/2003/3/Rev.1, para. 31. Other extensive web-based information sources include the one Fish Community Directory <http://www.onefish.org/static/index.jsp>.

⁵¹ The meeting was established following COFI review of RFMOs from 1995 to 1997. It is open to all RFMOs, so includes those with no competence on matters covered by the Agreement. By FAO Convention, the meeting is of regional fisheries *bodies*. Reports in documents FIPL/R597, R645 and R703. The FAO Coordinating Working Party on Fisheries Statistics is another forum in which RFMO experts meet on cooperation with UNEP. See para. 110.

⁵² For example, approaches to allocation criteria were under drawn-out discussion at the same time from 1999 to 2001 in at least NAFO, ICCAT and in negotiations to establish SEAFO.

⁵³ Part XV is applied with some strengthening, for example art. 31 of the Agreement provides for prescription of provisional measures where appropriate to prevent damage to fish stocks, adding to art. 290 of UNCLOS, which provides for such measures to prevent serious harm to the environment. Among respondents to the voluntary survey, the United States and Canada reported that, in accordance with art. 30.4 of the Agreement, they have made declarations on their choice of UNCLOS procedures for the settlement of disputes, despite not being parties to UNCLOS.

⁵⁴ As at 27 September 2001, 15 States had nominated experts. In responses to the survey, one non-party to UNCLOS reported a nomination under art. 30. See http://www.un.org/Depts/los/settlement_of_disputes/experts_special_arb.htm#_Ref478528738.

- ⁵⁵ ITLOS cases No. 3 and No. 4 and the subsequent Arbitration regarding southern bluefin tuna; and ITLOS case No. 7 (suspended) concerning the conservation and sustainable exploitation of swordfish stocks in the south-east Pacific Ocean. For details see www.itlos.org and for the arbitration, www.worldbank.org/icsid.
- ⁵⁶ Art. 3.3 providing that Part VII also applies to assistance with respect to implementation of arts. 5, 6 and 7; art. 11 (f) relating to new members of RFMOs (where appropriate also art. 11 (d) and (e)) and annex 1, art. 1.2, relating to training as well as financial and technical assistance with respect to all aspects of collection and sharing of data.
- ⁵⁷ Major projects associated with the Code include the Japan-Norway-United States-funded FAO Fish Code trust fund and the United Kingdom-funded Sustainable Fisheries Livelihoods Programme in Western Africa. See COFI/2003/3/Rev.1, paras. 12-15.
- ⁵⁸ The reply of WECAFC to the survey confirmed no measures linked to the Agreement. Other FAO bodies did not reply. The first meeting of RFBs noted that FAO bodies suffered from the absence of real responsibility and ownership on the part of member States, so the bodies were only forums for discussion and training. See report FIPL/R597, para. 30.
- ⁵⁹ Relevant to art. 24.2 (b) of the Agreement.
- ⁶⁰ In addition to the regional initiatives indicated, some respondents to the survey provided details of bilateral assistance. For example, Norway reported programmes related to stocks covered by the Agreement and north-west Africa, also data collection in Viet Nam, and Australia various programmes including capacity with Papua New Guinea, Samoa and Tonga and on port monitoring with Indonesia.
- ⁶¹ IDDRA regional study (Manning), p. 25.
- ⁶² 1992 Madrid Protocol. Not yet in force.
- ⁶³ General Assembly resolution 57/143, para. 14. See also *FAO Fisheries Report 702*, para. 27.
- ⁶⁴ The regional agreements are the 1979 South Pacific FFA Convention and 2001 SADC Fisheries Protocol.
- ⁶⁵ Dispute settlement was also noted as a low priority by several NGO respondents to the voluntary survey.
- ⁶⁶ FAO, GEF, UNEP and the World Bank information draws on responses to the survey. Other agencies did not respond. Information is drawn from web sites and may not be comprehensive.
- ⁶⁷ See para. 82.
- ⁶⁸ See, for example, discussion at the 2001 UNEP meeting of the Programme, document UNEP(DEC)/RS.3.8, paras. 125-130.
- ⁶⁹ For example, decisions COP II-10, IV-5 and V-2.
- ⁷⁰ World Bank, *Legislating for Sustainable Fisheries: A Guide to Implementing the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement*, 2001.
- ⁷¹ Art. XV.2(b) of the CITES Convention requires consultation with other relevant agencies. On FAO-CITES cooperation, see also COFI discussion in *FAO Fisheries Report 702*, paras. 15 and 46-49.
- ⁷² For the WTO Ministerial (Doha) Declaration, see document WT/MIN(01)/DEC/1, para. 28. http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#rules. A related issue on trade measures is proper use of World Customs Organization (WCO) customs classifications for fish products. See also *FAO Fisheries Report 702*, para. 42 (on WCO) and paras. 71-74 (on WTO). For WTO overview of multilateral environmental agreements see document WT/CTE/W/191, paras. 77-90.
- ⁷³ See para. 29 of the present report.

Annex I

Status of the Agreement as at 30 June 2003 and list of respondents to the voluntary survey

States and one entity that have signed the Agreement (59)

Argentina, Australia, Austria, Bangladesh, Belgium, Belize, Brazil, Burkina Faso, Canada, China, Côte d'Ivoire, Denmark, Egypt, Fiji, Finland, France, Gabon, Germany, Greece, Guinea-Bissau, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Luxembourg, Maldives, Marshall Islands, Mauritania, Micronesia (Federated States of), Morocco, Namibia, Netherlands, New Zealand, Niue, Norway, Pakistan, Papua New Guinea, Philippines, Portugal, Republic of Korea, Russian Federation, Saint Lucia, Samoa, Senegal, Seychelles, Spain, Sri Lanka, Sweden, Tonga, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, and the European Community.

States that have ratified or acceded to the Agreement (34)

Australia, Bahamas, Barbados, Brazil, Canada, Cook Islands, Costa Rica, Cyprus, Fiji, Iceland, Iran (Islamic Republic of), Maldives, Malta, Mauritius, Marshall Islands, Micronesia (Federated States of), Monaco, Namibia, Nauru, New Zealand, Norway, Papua New Guinea, Russian Federation, Saint Lucia, Samoa, Senegal, Seychelles, Solomon Islands, Sri Lanka, Tonga, Ukraine, United Kingdom of Great Britain and Northern Ireland (Overseas Territories), United States of America, Uruguay.

Provisional application of the Agreement: No State has provisionally applied the Agreement in accordance with article 41.

Respondents to the voluntary survey (including replies received up to 30 June 2003)

States Parties: Australia, Brazil, Canada, Iceland, New Zealand, Norway, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland (Overseas Territories), United States of America.

Signatories: European Community.

Other States: Croatia, Cuba, Ghana, Latvia, Mexico, Oman, Poland, Qatar, Saudi Arabia.

Pre-1995 RFMOs: APFIC, CCAMLR, CCSBT, I-ATTC, IBSFC, ICCAT, ICES, IOTC, NEAFC, PSC, WECAFC.

Post-1995 RFMOs: CPPS (for Galapagos Agreement), WCPFC.

IGOs: ECSWA, FAO, GEF, UNEP, World Bank.

NGOs: Comité catholique contre le faim et pour le développement, Japan Seaman's Union, World Resources Institute.

Notes

Updated version of the Status of the Agreement available on the DOALOS web site.

CPPS reply recorded as post-1995 as responses relate to the 2000 Galapagos Agreement, not earlier work of the CPPS.

Annex II

Summary of responses to the voluntary survey

Table 1

Implementation of selected provisions of the Agreement by States and the European Community

Summary of issue addressed/measure applied	Respondent	States Parties 34 consulted		Other Signatories 25 consulted		Other states 123 consulted		EC 1	
	Relevant article	Replies	Positive	Replies	Positive	Replies	Positive	Reply	Positive
General application of Agreement		8	8			7	7	1	1
Partial application of Agreement		1	1			2	2		
Non-application of Agreement									
Precautionary approach	Article 6.1	9	9			8	8	1	1
Compatibility of measures	Article 7	8	8			9	9	1	1
Coastal State member of relevant RFMO	Article 8.3	9	9			8	8	1	1
Flag State: collection of data	Article 14.1	9	8			9	9	1	1
Flag State: collection of data	Article 14.1(a)	8	8			9	9	1	1
Flag State: data in sufficient detail	Article 14.1(b)	8	7			9	9	1	1
Flag State: provision of timely data	Article 14.1(b)	8	8			8	8	1	1
Flag State: verification of data	Article 14.1(c)	8	8			9	9	1	1
Standards specification of data	Article 14.2(a)	9	8			9	9	1	1
Shared analytical techniques	Article 14.2(b)	9	9			9	7	1	1
Strengthening of research	Article 14.3	9	9			9	8	1	1
Publication of research	Article 14.3	9	9			9	9	1	1
Flag State: ban on fishing where non-member of RFMO	Article 17.2	7	5			5	3	1	0
Deterrent action taken through RFMO	Article 17.4	7	7			5	2	1	1
Control of vessels on high seas	Article 18.1	9	8			7	5	1	1
Issue of licences, authorizations permits	Article 18.3(a)	8	8			6	6		
RFMO licence conditions applied	Article 18.3(b)(i)	8	7			5	5		
Unlicensed fishing prohibited	Article 18.3(b)(ii)	8	8			6	6		
Obligation to carry licence, produce for inspection	Article 18.3(b)(iii)	7	6			6	6		
Licence required from third State for fishing in EEZ	Article 18.3(b)(iv)	8	6			6	4		
National record of vessels	Article 18.3(c)	8	8			6	6		
Access to record	Article 18.3(c)	7	7			5	3		
Marking of vessels (FAO standards)	Article 18.3(d)	8	8			6	6		
Reporting of vessel position and catch	Article 18.3(e)	8	8			6	6		
Verification of catch (e.g. observation, inspection)	Article 18.3(f)	8	8			6	6		

<i>Summary of issue addressed/measure applied</i>	<i>Respondent</i>	<i>States Parties 34 consulted</i>		<i>Other Signatories 25 consulted</i>		<i>Other states 123 consulted</i>		<i>EC 1</i>	
	<i>Relevant article</i>	<i>Replies</i>	<i>Positive</i>	<i>Replies</i>	<i>Positive</i>	<i>Replies</i>	<i>Positive</i>	<i>Reply</i>	<i>Positive</i>
National and regional MCS applied	Article 18.3(g)(i)	8	7			6	4		
National and regional observer programmes	Article 18.3(g)(ii)	8	7			6	6		
VMS applied	Article 18.3(g)(iii)	8	8			6	5		
Regulation of transshipment	Article 18.3(h)	8	5			5	3		
Compliance with RFMO measures, including non-target catch	Article 18.3(i)	8	7			6	6		
National MCS compatible with RFMO MCS	Article 18.4	8	7			6	5		
Enforcement of RFMO measures	Article 19.1	9	7			6	6	1	1
Enforcement wherever violations occur	Article 19.1(a)	8	8			7	6		
Immediate and full investigation, reporting outcome	Article 19.1(b)	8	7			7	5		
Requirement to provide information to investigators	Article 19.1(c)	7	6			5	4		
Referral of violations, detention of vessel where necessary	Article 19.1(d)	8	8			7	7		
Prohibition on fishing pending compliance with sanctions	Article 19.1(e)	8	7			6	5		
Adequate severity of sanctions	Article 19.2	8	8			7	5		
Participation in RFMO MCS	Article 20.1	10	10			8	7	1	1
Provision of evidence to other States	Article 20.2-3	9	5			6	1		
Authority for coastal State boarding and inspection	Article 20.6	9	4			7	1		
Authority for other RFMO member to board and inspect	Article 21.1	10	8			6	1		
Port State inspection	Article 23.1	10	8			7	4		
Port State inspection of documents	Article 23.2	8	8			4	4		
Port State inspection of gear	Article 23.2	8	8			4	4		
Port State inspection of catch	Article 23.2	8	8			4	4		
Port State prohibitions on landing and transshipment	Article 23.3	10	9			6	2	1	1
Provision of assistance to developing States	Article 24.1	10	7			7	2	1	1
Subsistence, small-scale, artisanal fishers and women fish workers	Article 24.2(b)	7	5			2	2	1	1
Assistance to develop straddling/highly migratory stocks	Article 25.1(a)	7	5			2	1	1	1
Assistance to participate in high seas fisheries	Article 25.1(b)	7	5			2	0	1	1
Assistance to participate in RFMOs	Article 25.1(c)	7	6			2	2	1	1
Assistance with data requirements	Article 25.3(a)	7	7			2	1	1	1
Assistance with stock assessment/research	Article 25.3(b)	7	7			2	1	1	1
Assistance with MCS	Article 25.3(c)	7	6			2	0	1	1
Establishment of special funds	Article 26.1	10	6			5	0	1	0
Assistance to establish or strengthen RFMOs	Article 26.2	9	7			8	1	1	1
Acceptance of Part XV of UNCLOS (UNCLOS non-parties only)	Article 30.4	2	2			2	0	1	1
Nominations under Part XV of UNCLOS (UNCLOS non-parties only)	Article 30.4	2	0						

<i>Summary of issue addressed/measure applied</i>	<i>Respondent</i>	<i>States Parties 34 consulted</i>		<i>Other Signatories 25 consulted</i>		<i>Other states 123 consulted</i>		<i>EC 1</i>	
	<i>Relevant article</i>	<i>Replies</i>	<i>Positive</i>	<i>Replies</i>	<i>Positive</i>	<i>Replies</i>	<i>Positive</i>	<i>Reply</i>	<i>Positive</i>
Encourage non-parties to become parties	Article 33.1	7	6			4	1	1	1
Measures to deter vessels of non-parties which undermine agreement	Article 33.2	8	8			6	1	1	1
Application of annex II	Annex II	9	8			5	4		

Notes

59 signatories (and 1 entity), of which 34 States Parties as at 30/06/03, and 123 other States Members of the United Nations.

Tailored questionnaire answered by EC as participant under article 47.

No reply includes answer “not applicable”.

Table 2
Implementation of selected provisions of the Agreement by RFMOs

Summary of issue addressed/measure applied	Respondent	RFOs (pre-95) 42 consulted		RFOs (post-95) 3 consulted	
	Relevant article	Replies	Positive	Replies	Positive
General application of Agreement		5	5	1	1
Partial application of Agreement		1	1		
Non-application of Agreement		1	1	1	1
Stock recovery	Article 5(e)	7	6		
Ecosystem approach	Article 5(e)	8	5		
Gear selectivity	Article 5(f)	8	7		
Protected species	Article 5(f)	7	3		
By-catch	Article 5(f)	8	5	1	0
Overfishing	Article 5(h)	8	7		
Excess capacity	Article 5(h)	8	6		
Artisanal and subsistence fishers	Article 5(i)	6	6		
Precautionary approach	Article 6.1	7	4	1	0
Stock-specific reference points	Article 6.3(b)	8	6		
Compatibility of measures	Article 7	6	4	1	1
Coastal State member of relevant RFMO	Article 8.3	6	6	1	1
All fishing in RFMO according to measures	Article 8.4	8	8	1	0
Fishing commensurate with State of resources	Article 10(a)	8	7		
Establishment of participatory rights (e.g. TACs)	Article 10(b)	8	5		
International minimum standards	Article 10(c)	7	5		
Reliable stock assessments	Article 10(f)	5	4	2	1
Interests of new members	Article 10(i)	6	3		
Cooperative MCS measures	Article 10(h)	8	7		
Timely and effective decision-making	Article 10(j)	7	6	2	2
Cooperation of national agencies and industries	Article 10(l)	7	7		
Due publicity for measures	Article 10(m)	8	8		
Transparency	Article 12.1	8	8	1	1
NGO access	Article 12.2	8	8	1	0
Access to records	Article 12.2	8	8		
Recognition of need to strengthen RFMO?	Article 13	7	6	1	1
Measures for fishing entities	Article 17.3	7	6	1	1
RFMO shared information on non-member fishing	Article 17.4	8	6	1	1
Deterrent action taken through RFMO	Article 17.4	8	6	1	0
VMS applied	Article 18.3(g)(iii)	7	3	1	0
Participation in RFMO MCS	Article 20.1	7	2	2	1
RFMO scheme for boarding and inspection by non-flag State	Article 21.2	7	1	1	1
Dispute-settlement mechanisms	Article 28	6	4	2	2
Ad-hoc expert panel for technical disputes	Article 29	7	3	2	1
Standard requirements on data	Annex I	7	7	2	1
Data from research surveys	Annex 1 Article 6(b)	8	7	2	2

<i>Summary of issue addressed/measure applied</i>	<i>Respondent</i>	<i>RFOs (pre-95)</i> <i>42 consulted</i>		<i>RFOs (post-95)</i> <i>3 consulted</i>	
	<i>Relevant article</i>	<i>Replies</i>	<i>Positive</i>	<i>Replies</i>	<i>Positive</i>
Data from port samples	Annex 1 Article 6(d)	8	7	2	2
Application of annex II	Annex II	7	5	1	0

Notes

Post-1995 RFMO answers related to practice to entry into force.

Absence of reply includes where respondent left blank or indicated "not applicable".

Annex III

Table 1
Assessments of the relevance of the General Principles in article 5
of the Agreement

Respondent	Rating	Article											
		5(a)	5(b)	5(c)	5(d)	5(e)	5(f)	5(g)	5(h)	5(i)	5(j)	5(k)	5(l)
All respondents	5	22	21	15	9	9	10	12	20	10	18	15	19
	4	4	5	4	11	8	7	6	6	7	9	10	6
	3	3	3	9	9	9	9	7	3	7	3	5	4
	2		1	2	1	4	4	3	1	2			
	1	1						2		4			1
States Parties	5	7	9	7	4	5	5	6	6	3	8	6	7
	4	1		1	5	3	4	3	2	2	1	3	2
	3	2	1	1	1	2	1	1	1	2	1	1	1
	2			1					1	1			
	1									2			
Signatories	5	1	1	1					1		1		1
	4												
	3				1	1	1	1		1		1	
	2												
	1												
Other States	5	4	3	3	1	2	4	3	6	2	2	2	4
	4	2	4	1	2	3	1	2	1	1	3	4	2
	3	1		3	4	2	1	1		3	2	1	1
	2						1	1					
	1									1			
RFMOs	5	8	8	3	3	2	1	2	6	3	6	7	6
	4			2	3	2	2	1	2	3	3	2	2
	3			4	3	2	5	3	1	1			
	2		1			3	1	2		1			
	1	1						1		1			1
NGOs	5	2		1	1			1	1	2	1		1
	4	1	1		1				1	1	2	1	
	3		2	1		2	1	1	1			2	2
	2			1	1	1	2						
	1							1					

Table shows number of respondents indicating the principle to be:

5 - Extremely relevant

3 - Relevant

1 - Not very relevant.

Table 2
**Assessment by NGO respondents of the relative priority to be accorded to
 selected provisions of the Agreement**

<i>Provision</i>		<i>Top priority</i>	<i>Priority</i>	<i>Low priority</i>
Article 6	Precautionary approach	1	1	1
Article 7	Compatibility of measures	2	1	
Article 14	Scientific research	1	2	
Articles 18-19	Duties of the flag State	2	1	
Articles 20-21	Regional enforcement	1	2	
Article 23	Port State measures	2	1	
Article 17	Fishing by non-members	2	1	
Article 17	Measures against non-members	1	2	
Article 26.1	Assistance to developing States	1	1	1
Article 12	Transparency in RFMOs	1	2	
Article 13	Strengthening RFMOs	1	2	
Article 27-30	Dispute settlement		2	1

Annex IV

Overview of assistance relevant to the Agreement provided by the United Nations and related bodies

<i>Summary of issue surveyed</i>	<i>Agreement provision (where applicable)</i>	<i>Replies</i>	<i>Positive</i>
General impact on programmes		2	2
Partial impact on programmes			
No impact on programmes		3	3
Provision of assistance	Article 24.1	5	3
Area of assistance:			
Food security	Article 24.2(a)	3	1
Sectoral: subsistence, small-scale, artisanal, women	Article 24.2(b)	3	1
Capacity to manage stocks	Article 25.1(a)	3	1
Development of EEZ stocks	Article 25.1(a)	3	0
Participation in high seas fisheries	Article 25.1(b)	3	0
Participate in RFMOs	Article 25.1(c)	3	1
Data requirements	Article 25.3(a)	4	2
Stock assessment/research	Article 25.3(b)	3	1
MCS: training, capacity-building	Article 25.3(c)	3	1
MCS: financing of technology	Article 25.3(c)	4	1
Establishment of special funds	Article 26.1	4	0
Establishment, strengthening of RFMOs	Article 26.2	4	3

Annex V

Key constraints to implementation of the Agreement and recommendations for action: Summary of replies to the voluntary survey

<i>Source(s)</i>	<i>Constraints</i>	<i>Suggestions made by respondent(s)</i>
States	Legislation, resources and capacity for implementation, including to manage participation in increasing numbers of RFMOs. For developing States in particular, trained human and financial resources to implement MCS, including provision of surveillance vessels and VMS.	New national legislation, which is in preparation in many States. Better RFMO coordination, to help streamline national approaches. Additional resources.
States	Absence of coordinated approach among adjacent coastal States.	
States	For coastal States, size and diversity of foreign fleets. Low national priority due to small size of high seas fleet.	
RFMOs	RFMO members who do not accept all provisions of the Agreement.	
RFMOs, NGOs	IUU fishing, including fishing by non-members, in RFMO areas.	Regional MCS, including schemes aimed at non-members. Better enforcement by RFMO members.
RFMOs, NGOs,	Insufficient data, including for clear identification of relevant stocks and their distribution. Also misreporting of catches. Ineffective control of IUU by vessels changing registers.	Implementation of RFMO measures. Incentives for vessel operators to comply. Joint research with coastal States. International monitoring system.
NGOs	Insufficient application of precautionary approach.	Check of all measures against precautionary approach.
NGOs	Absence of common approach across RFMOs.	Improved coordination

Annex VI

Article 5 of the Agreement: 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.