

## **Executive Director's Report**

### New Council Members

I want to extend my welcome to the two new Council members, Linda Behnken and Kevin O'Leary. We've worked for sometime now with Linda, and of course Kevin has testified a number of times before the Council and is a familiar face. The staff looks forward to working with you both over the coming years. Welcome aboard!

### Plan Team Personnel

Item B-1(a) is a letter from ADF&G Commissioner Rue nominating Tory O'Connell and Bill Bechtol to the Gulf of Alaska groundfish plan team, and Ivan Vining, along with current team member Dave Ackley, to the Bering Sea and Aleutians groundfish plan team. Tory replaces Barry Bracken, so there will be a net addition of one ADF&G staff person to each team. The SSC is reviewing their qualifications and the Council will need to confirm their memberships.

Also under item B-1(a) is a letter from the Alaska Marine Conservation Council requesting that a seabird biologist be added to the groundfish teams. The teams recognize the need for this expertise, but the ecosystems chapter is pretty much complete for now and the team will concentrate on individual fish species assessments in November. Therefore, we should start looking for seabirds expertise to add during 1996.

### Nominations to AP/SSC/PNCIAC

Just a reminder that we will be calling for nominations to these three committees following this meeting. The Council will review nominations in December for one-year terms for the SSC and AP, and two-year terms for the crab industry committee.

### Video Presentation on Gulf of Alaska Currents

The SSC will have viewed a video describing the ocean circulation in the Gulf of Alaska. Jim Ingraham of NMFS prepared the video which shows how highly variable the current is. All this variability, of course, may be having an impact on replenishment of the Gulf pollock stocks. I would like to suggest that we arrange for a lunch time showing of the video this Friday. Dr. Ingraham will be available to answer questions. I also would like to schedule for January or April, as time permits, another presentation by the Fisheries-Oceanography Cooperative Investigations (FOCI) group that is working on ecosystem processes and pollock stocks in the GOA and BSAI.

### Council Chairmen's Meeting

The Regional Council chairmen met in Homer, Alaska, July 10-12. Chairman Lauber and Vice-Chairman Pereyra both attended along with several staff members. It was a good meeting and we had the chance to air concerns with Rollie Schmitt, congressional staff, NOAA GC Terry Garcia, and Dave Colson. The chairmen reviewed and offered comments on the then current draft of the Magnuson Act amendments. The meeting is summarized in item B-1(b). If you have any questions or comments after having had the chance to review the summary, we would be happy to respond. Next year's meeting will be in San Diego, California.

### Straddling Stocks Conference

A two-week session of the U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks took place July 24 - August 4 in New York City. This led to an agreement on implementation of various Law of the Sea provisions as they relate to straddling stocks such as the pollock resource in the Donut Hole. A summary of the session and agreement is under B-1(c) and we have limited copies of the full convention. Bill Dilday will summarize these activities and other international topics of interest for us.

### Council Meetings in 1996 and 1997

The following schedule shows Council meetings for the next two years. We are now arranging hotel space and will provide more information as it becomes available.

#### Tentative Council Meeting Dates

	January (week of)	April (week of)	June (week of)	September (week of)	December (week of)
1995					4th/Anch
1996	8th/Anch	15th/Anch	17th/Portland	16th/Sitka	9th/Anch
1997	6th/Anch	14th/Anch	16th/Kodiak	22nd/Seattle	8th/Anch

### Committees

This is the time of year when we review committee memberships. Item B-1(d) is a current listing. Please send us your suggested changes.

**ALASKA MARINE CONSERVATION COUNCIL**

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September 8, 1995



Dr. Clarence Pautzke  
North Pacific Fishery Management Council  
P.O. Box 103136  
Anchorage, Alaska 99510

Dear Clarence,

As you're aware, the Alaska Marine Conservation Council has been working to gain a comprehensive reduction in the level of bycatch and waste in the North Pacific fisheries. While this warrants much of our attention, we see the imperative of attaining a much broader understanding on the marine ecosystem.

We are ardent supporters of an ecosystem approach in federal fisheries management. We applaud the addition of the chapter on ecosystem considerations now included in the Stock Assessment and Fishery Evaluation (SAFE) document. Discussing multi-trophic level relationships which may be affected by the recommendations of fish biologists is a good step towards true understanding and integration of the many facets of the marine ecosystem. We encourage the Groundfish Plan Team to continue to develop this understanding.

We believe it is both essential and timely for the Groundfish Plan Team to broaden its membership to include at least one seabird biologist. Seabirds in the Bering Sea such as black- and red-legged kittiwakes, as well as common and thick-billed murres are experiencing declines in their populations (NMFS information). It would be beneficial to the fishery scientists, bird biologists, and the public to have information shared from different perspectives to better understand delicate food web relationships. Then, armed with the best information available, we are all better equipped to make fisheries management decisions in a way to protect the longterm health and productivity of fish populations.

By utilizing the expertise and resources of a federal agency such as U.S. Fish and Wildlife Service, I hope any budgetary constraints to this idea can be overcome. We all have much to gain. The Plan Team meeting in November of 1995 would not be too soon to include the seabird perspective. Please call if we can be of further assistance in this.

Sincerely,

Fran Bennis  
Field Coordinator

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

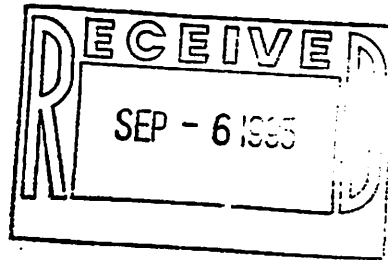
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

AGENDA B-1(a)  
SEPTEMBER 1995

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
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August 31, 1995



Mr. Clarence Pautzke  
Executive Director  
North Pacific Fishery Management Council  
P.O. Box 103136  
Anchorage, AK 99510

Dear Mr. Pautzke:

I would like to nominate several Alaska Department of Fish and Game staff to the Gulf of Alaska (GOA) and Bering Sea (BS) groundfish plan teams. These recommendations are brought about by ADF&G personnel changes and recent developments in groundfish fisheries. Although recent plan team participation by ADF&G has been limited to one member per team, we have had as many as three members on the GOA team and two members on the BS team in the past. My recommendation for two ADF&G members per team at this time reflects expanded groundfish fisheries in the central GOA and the importance of bycatch in BS groundfish fisheries management.

GOA groundfish plan team member, Barry Bracken, recently retired after a long career with ADF&G. I nominate Tory O'Connell and Bill Bechtol for membership on the GOA groundfish team. Tory O'Connell has recently been appointed as groundfish project leader for Southeast Region. Tory's expertise on assessment and biology of demersal shelf rockfishes will be particularly valuable to the team. Bill Bechtol is a fisheries biologist with primary responsibilities for research and management of groundfish fisheries in Prince William Sound and the northern GOA. As groundfish fisheries of this region have grown in recent years, it would be beneficial for Bill to take part in the Council process through team membership.

I nominate Dave Ackley to continue as member of the BS groundfish plan team. As you know, Dave has been very active with plan amendments concerning bycatch, and he will continue to be a big asset to the Council through team membership. I nominate Ivan Vining as a second ADF&G member to the BS groundfish plan team. Ivan was recently appointed as regional biometrician for Westward Region. With his experience in analysis of eastern BS trawl survey data and his responsibilities for salmon, crabs, and other shellfish, Ivan would be an asset to the BS groundfish team.

Mr. Clarence Pautzke

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August 31, 1995

I appreciate your consideration of these nominations. Resumes of new nominees are enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Frank Rue". The signature is written in black ink and is positioned to the left of the typed name.

Frank Rue  
Commissioner

Enclosures

cc: Gordon Kruse

## SUMMARY MINUTES

### Regional Fishery Management Council Chairmen's Meeting July 10-12, 1995 Homer, Alaska

Council Chairmen, Vice Chairmen, and Executive Directors met July 10-12, 1995, in Homer, Alaska. The meeting was called to order by Rick Lauber, Chairman of the North Pacific Fishery Management Council, at 10:30 a.m. on Monday, July 10. Representatives of NMFS, NOAA, U.S. State Department, U.S. Coast Guard, and staff for the U.S. Senate and House of Representatives joined the meeting on Tuesday and Wednesday, July 11-12, 1995. The meeting was adjourned on Wednesday, July 12, at approximately 3:15 p.m.

#### Attendees:

##### New England Council

Joseph Brancaloneo, Chair  
Eric Smith, Vice-Chair  
Doug Marshall, Executive Director

##### Mid-Atlantic Council

Lee Anderson, Chair  
Tony DiLernia, Vice-Chair  
David Keifer, Executive Director

##### South Atlantic Council

David Cupka, Vice-Chair  
Bob Mahood, Executive Director

##### Caribbean Council

Patricia Skov, Chair  
Jose Campos, Vice-Chair  
Miguel A. Rolon, Executive Director

##### Gulf Council

Julius Collins, Chair  
Ken Roberts, Vice-Chair  
Wayne Swingle, Executive Director

##### Pacific Council

Frank Warrens, Chair  
Pete Leipzig, Vice-Chair  
Larry Six, Executive Director

##### North Pacific Council

Richard Lauber, Chair  
Wally Pereyra, Vice-Chair  
Clarence Pautzke, Executive Director  
Staff: Chris Oliver, Deputy Director  
Helen Allen, Secretary  
Gretchen Harrington, Intern

##### Western Pacific

Ed Ebisui, Jr., Chair  
Kitty Simonds, Executive Director

#### Invited Guests:

Dr. William Aron, Alaska Fisheries Science Center  
Ronald J. Berg, NMFS-Alaska Region  
Ambassador David Colson, State Department  
Terry Garcia, General Counsel for NOAA  
Gary Matlock, NMFS-DC  
Tom Melius, Congressional Staff-Senate  
John Oliver, NMFS-DC  
CAPT Vince O'Shea, USCG  
RADM Norman Saunders, USCG  
Richard Schaefer, NMFS-DC  
Rolland Schmitten, Asst. Adm. for Fisheries  
Dave Whaley, Congressional Staff-House

## Agenda

The Chairmen discussed Magnuson Act amendments proposed in H.R. 39 and S. 39 and received reports on international fisheries issues, Coast Guard activities, enforcement and penalty issues, NMFS reorganization and the possible disbanding of the Commerce Department, as well as reports and discussions of several other administrative matters. Brief summaries of the discussions follow.

### Summary of Presentations/Discussions of Agenda Items

#### Magnuson Act Amendments

Tom Melius, staff for the U.S. Senate Subcommittee on Oceans & Fisheries, and Dave Whaley, staff for the House Committee on Resources, were available to give clarifications and answer questions regarding the two current proposed amendments, S. 39 and H.R. 39. H.R. 39 has already been passed out of the Committee and been through mark-up; however S. 39 has not yet been addressed by the Subcommittee. A summary of the Chairmen's discussions and recommendations on the proposed amendments is in Appendix I (which is a letter dated July 18, 1995 to Tom Melius and Dave Whaley on the congressional staffs. It has been reviewed by all Councils).

#### International Fisheries

Ambassador David Colson, Deputy Assistant Secretary of State for Oceans, provided an overview of international fisheries issues. He noted that a regional management system is needed for pelagic stocks in the Pacific. There are now 600 Chinese longliners operating in the Marshall Islands, and several other countries are also fishing pelagics for which there is little reliable biological and catch information available. He stressed the need to expand data collection and establish a regulatory management program for the Pacific Ocean. He also noted that international tuna agreements may be in jeopardy because of the continuing embargo on Latin American country tuna products related to the bycatch of dolphins. These countries have reduced their dolphin bycatch from 400,000 animals per year to 4,000, and yet this is not sufficient to relax the embargos. As a result, some of these countries may withdraw from international conventions for tuna management.

On the issue of reflagging, Mr. Colson indicated that the recent "reflagging amendment," if approved by Congress, will help to address the recurrent problem of commercial fishing companies from a high seas fishing nation that is party to an international convention, reflagging their vessels to small countries outside the convention to avoid management measures and restrictions imposed by the convention. Such vessels often fish with little or no chance of retribution if the terms of international treaties or agreements are violated. The reflagging amendments will resolve that problem by making those reflagged vessels fully responsible for their activities under international and domestic law.

Mr. Colson reported that the moratorium on high seas driftnets seems to be working and there are few participants in the fishery. Nevertheless, enforcement needs to remain vigilant as there will be increased pressure to extract ocean resources as world populations grow and resources become overutilized. He noted other stresses on the ocean environment including coastal pollution, ocean dumping of radioactive wastes by the Russians, and agricultural pollution. All these activities will harm or stress ocean resources at a time of growing populations, coastal use, and the need for sustained harvests of living resources.

Dick Schaefer noted that Western Atlantic shark populations range from areas off New England to Brazil and that international management will be required. Mr. Colson advised that the State Department does not normally initiate action until NMFS and the Councils bring forward proposed solutions. He mentioned that a constituent panel may be advantageous in advising the Department of State.

### Coast Guard Activities

RADM Saunders, Chief of Law Enforcement and Defense Operations for the U.S. Coast Guard, briefed the Chairmen on Coast Guard fisheries enforcement activities. He noted that statistics show that the Commercial Fishing Safety Act has made a tremendous impact on safety in the fishing industry, with a significant reduction in sinkings and fatalities. Also Coast Guard training centers established to familiarize boarding officers with regional fisheries activities are making boardings more efficient and less cumbersome for vessel owners and skippers. Admiral Saunders indicated that reductions in budget and personnel mandated by the President will require prioritizing activities and in some cases lower priority activities will not be covered as thoroughly as in the past.

### NOAA General Counsel Priorities for Enforcement

The South Atlantic Council had asked that NOAA General Counsel review current enforcement priorities and suggested that Councils should have input when priorities are developed. Terry Garcia, NOAA General Counsel, reported that they are responding to the President's directive to review regulations and eliminate those that are obsolete or that might better be carried out by states. Agencies with enforcement authority will focus on results, and emphasis will be on encouraging compliance. A review of current cases showed a significant number of violations of an extremely technical nature and many resulted from ignorance of regulations. Pursuing those types of cases takes extremely limited resources away from prosecuting more serious violations. General Counsel is emphasizing oral and written warnings for these lower-priority infractions and a less confrontational position for first-time and minor violations.

### Budget Outlook

John Oliver reported on current and future NMFS budget issues. He noted that the extra appropriation in 1995 allowed them to avoid reprogramming and helped to solve some operational problems. However, for 1996 and beyond the budget outlook is not as promising. The current House version of the budget resolution would cut NMFS by 8 to 11% of the current level and by 24% of the Department's requested budget. The Senate has not yet passed a budget resolution. Responding to the President's directive, NMFS has already reduced staff by a little over 200 FTEs and anticipates additional reductions of up to 345 in 1996.

### Pacific Pelagics

Ed Ebisui, Chairman of the Western Pacific Council, reviewed efforts to initiate a coordinated data gathering program for pelagics throughout the entire Pacific EEZ, and the Western Pacific Council's effort to become the lead Council for management of these species throughout the Pacific EEZ. Neither the Pacific Council nor the North Pacific Council have found it necessary to implement fishery management plans for these species although small amounts are taken in their areas of responsibility. The Pacific Council has received a great deal of industry opposition to the designation of the Western Pacific Council as the management authority for pelagics throughout the entire Pacific EEZ, and the Council has requested that existing data be compiled, along with a list of identified data needs, before making any decision on the issue.

### Any Proposed Changes to CFR

Gary Matlock reported that NMFS is responding to the President's mandate to reduce regulations by identifying those regulations that no longer have implementing authority and those that can be incorporated into permit and contract provisions. Next, they will review those measures that can be incorporated into other regulations, or changed or repealed with little effort or effect, and then they will review those regulations that will require more attention and discussion. NMFS will not eliminate a rule if such action could jeopardize the resource. Councils



will be included in discussions on any proposed changes. Clarence Pautzke, NPFMC, brought up the issue of sharing confidential information with contractors on Council projects. NMFS now can share such information and was asked to consider giving that authority to Councils also. It does not seem to be prohibited by the Magnuson Act.

#### Locality Pay

Several Councils asked NMFS to clarify whether Council staff members are eligible for locality pay. A memo from Rollie Schmitt to Council Executive Directors, dated July 26, 1994, indicated that they are not eligible for locality pay because they are not federal employees. This can result in a pay disparity between those Council Executive Directors at GS-15, step 10, and federal employees at the same grade/step level that have locality pay. Rollie Schmitt said that they have researched the issue thoroughly and that it is a policy call that has to be resolved by the Department of Commerce, not NOAA or NMFS. Dick Schaefer said they would continue to follow up on the issue and will keep the Councils informed.

#### Reorganization of NMFS

Rollie Schmitt reviewed the major aspects of the ongoing NMFS reorganization. One goal is to emphasize regional decision making. The thrust of the reorganization is to accomplish the mission of the agency more efficiently by emphasizing a team-oriented approach. Areas they are working on include agency image, planning and priorities, communication, teamwork, and accountability. There is a proposal to have NMFS Regional Directors use designees on the Councils, but no final decision has been made yet. The Councils argued that the Regional Directors should continue to participate in Council decision making.

#### Implementation of Marine Mammal Amendments

Gary Matlock reported on progress in implementing last year's amendments to the Marine Mammal Protection Act. He noted that on June 16, 1995, NMFS-proposed regulations were published to implement many of the amendments. Comments on proposed regulations and interactions between commercial fisheries and ESA-listed species must be received by July 31, 1995. Comments on the proposed list of fisheries must be received by September 14, 1995.

#### Transmit Dates for FMPs/Amendments

Some Councils have experienced delays in review and approval of FMPs and amendments because of the NMFS policy of not beginning the review period until they have determined whether the package is structurally complete. Concern was expressed that with the proposed shortened review period and the inclusion of regulatory amendments in changes to the Magnuson Act, delays might become even more frequent. Clarence Pautzke pointed out that the current Magnuson Act amendment package evidently has dropped the required automatic approval of an amendment after 95 days if the SOC has not disapproved it.

#### Implications of Growth in Recreational Fisheries

The Gulf of Mexico was looking for input from other Councils on management of fisheries that have both commercial and recreational allocations or quotas where the commercial effort is controlled by a quota and fishing ceases when that quota is taken. Ken Roberts of the Gulf Council stressed that most participants in recreational fisheries are not aware of stock dynamics and the interaction of the various fisheries, bycatch implications, and other management issues. He stressed that because recreational fisheries are becoming a larger part of the management picture, it is important to mount an education program so that recreational fishermen understand those interactions and the necessity for responsible actions. Dick Schaefer is working with the Department of

Interior and U.S. Fish & Wildlife Service to develop a national recreational plan that would generate a broad federal policy on issues such as angling ethics, prevention of waste, and controlling access. They hope to have the policy completed within a year.

#### Risk Aversion

The Gulf Council asked for clarification of a NMFS policy with regard to risk aversion. The issue arose when one of their decisions was disapproved because the Secretary determined that there was an "unacceptable risk of allowing overfishing." The Gulf Council was unaware of such a policy. Dick Schaefer said that although NMFS has not issued a formal policy statement on risk aversion, they have referred to it in several published documents, including the 1991 NMFS Strategic Plan.

#### Next Council Chairmen's Meeting

The Pacific Council volunteered to host the next Chairmen's meeting, in either May or July of 1996, on the West Coast. They will solicit input from Executive Directors on the location and exact dates. The Caribbean Council said they will host the meeting in 1997.

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

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July 18, 1995

Tom Melius  
Oceans & Fisheries Subcommittee  
Senate Commerce Committee  
428 Senate Hart Building  
Washington, DC 20510

Dave Whaley  
Committee on Resources  
U.S. House of Representatives  
1324 Longworth Building  
Washington, DC 20515

Dear Tom and Dave:

I'm sure you both took copious notes at the meeting this week, but thought I would provide a summary of the Chairmen's comments and positions on several aspects of the proposed Magnuson Act amendments contained in S. 39 and H.R. 39. I have keyed it by issue as listed in the comparative summary that was in your notebooks.

Bycatch. This language is generally acceptable. The South Atlantic Council did note, however, that it is currently developing a finfish bycatch reduction amendment to the South Atlantic Shrimp FMP. They oppose language in H.R. 39 that would delay these bycatch measures. They also feel that recreational catch and release fisheries should be given consideration in defining bycatch.

Voting Member Qualifications. As stated previously, Council Chairmen feel existing language in the Act is sufficient. The current Act does not preclude the interest groups identified in H.R. 39 from consideration for Council seats. Adding specific interest groups to be considered for balanced membership may be perceived as a mandate to cover all those interest groups when filling Council seats. This could lead to fewer appointments of those participating directly in the fisheries who have the most experience and expertise and whose viewpoints are critical to fishery management. The Chairmen would prefer the Senate's version, which is no change. The Chairmen do appreciate that the House language does not require a certain percentage of seats to go to the newly identified fields, as was the case in earlier draft legislation.

Conflict of Interest. Although Council Chairmen understand there is a public perception of conflict of interest, they continue to believe it is not a problem. However, they also understand that the integrity of the process must not be in doubt. The Chairmen could not come up with any better language than they had in their earlier comments, but continued to stress that it will be very difficult on the Council decision process to require real-time decisions by NOAA-GC or other official about whether a Council member should be able to vote on a particular motion or amendment. In general, the Council Chairmen still would prefer that any challenges to a member's vote be investigated after the fact to avoid delays in Council action. NOAA General Counsel noted that it would be difficult to develop objective criteria to determine whether someone was "significantly affected."

Mid-Atlantic Council Membership. Council Chairmen support the addition of North Carolina membership to the Mid-Atlantic Council, increasing the membership by two.

**Council Member Compensation.** Council Chairmen oppose a reduction in the level of Council member compensation, particularly in light of the additional preparatory work and other duties outside Council meetings. In the case of working fishermen, whose participation is critical, this is particularly sensitive. It is not merely a matter of dollars and cents. Rather, the Chairmen feel reducing the level of compensation sends the wrong message to appointed members and to others regarding the importance of the Council process and the job being performed. The Chairmen recommend that the current pay level be assigned an equivalent GS-15 level (for example, step 10), and then be allowed to fluctuate with future changes to the federal pay schedule.

### **Council Procedures**

**Qualifications of Testifiers.** Council Chairmen oppose the requirement that written and oral statements shall include qualifications and interest of testifiers. They feel this will send a message that some testimony should hold greater weight than others depending on the qualifications of the testifier. While the proposed requirements may not be all that onerous, the Chairmen feel it is not all that necessary as an amendment to the Act. Most Council members are aware of the background of those that testify, and if not, can ask. Also, most Councils use a sign-up sheet or cards that request name and affiliation of testifiers.

**21-day Advance Notice of Agenda Changes.** Council Chairmen oppose this recommendation because it could significantly impact their ability to address critical issues quickly. Councils now notify the public in a timely manner on any final action or controversial issues. They are very aware that a final decision could be technically flawed if insufficient notification is given. Therefore the staffs do their utmost to notify industry sectors if the agenda changes or a particularly contentious issue is placed on the agenda. The Chairmen also noted that oftentimes it is a request from NMFS that will come in at the last minute for consideration by the Council. This new requirement would not allow that. The Councils can only recall a handful of instances when someone felt they were not aware of items on the agenda, and even fewer really substantive complaints. Therefore this new provision for 21-day notice seems unnecessary.

**Reports as Part of Minutes.** Requiring all reports received for or during a Council meeting to be part of the Council meeting minutes would be cumbersome and expensive. If the intent is that the Council will maintain copies of all reports for public scrutiny, but not necessarily send them out with every copy of the minutes, then the new language is acceptable. All Councils keep complete records of meeting materials available for public reading.

**Habitat.** Council Chairmen reiterated their previous comments indicating that budget and staff constraints would make this requirement cumbersome, if not impossible. Chairmen do not oppose tasking the Secretary of Commerce to describe essential habitat in consultation with the Councils. Suggested language changes would be on p. 29, line 19 of H.R. 39: "(A) establish guidelines and assist the Councils . . .", and on p. 30, line 1: "(2) The Secretary, in consultation with the Councils, and in cooperation with the Secretary of the Interior . . ."

**Fishery Dependent Communities/Community Development Quotas.** There was no particular Chairmen's recommendation on this language, but the Pacific Council has gone on record stating that though they believe that the needs of fishing communities are important, and will consider those needs when making management recommendations, the Pacific Council does not support the addition of a new national standard which requires that management measures take into account the importance of harvest to fishery dependent communities. They believe that would encourage additional allocation disputes on the west coast which would likely be unnecessary or inappropriate.

**Fees.** The language on pp. 21-23 of H.R. 39 as constructed would require any observer program in an FMP to be supported by a fee program. The North Pacific Council is reviewing its fee program and would not want to be locked into a requirement to have one. The Council Chairmen were told that this observer fee program was intended to be discretionary. Language in H.R. 39 should be changed to reflect that intent. This could be accomplished by adding "shall" at the beginning of paragraphs (A), (B) and (C) on p. 22 and "may" at the beginning of paragraph (D).

The Chairmen's comments on ITQ-associated fees are as follows: In general, Council Chairmen favored fees for specific limited entry type programs but stressed that fees in smaller fisheries could be overly burdensome to industry. It was stressed that if fees are to be imposed for a specific program, that that should be included at the inception of that program so that all involved are aware of the possibility. The South Atlantic Council suggested that fees should be charged based on production, not quota, so that fishermen are not encouraged to continue to fish the entire quota in order to cover fees.

**Overfishing.** Council Chairmen opposed legislating a time limit on rebuilding because the biology of each species is different. Therefore, in whatever language is passed, if there is a time limit, it is very important that the exemption clause on p. 33, lines 3-5 of H.R. 39, be included. The Chairmen also commented that because MSY is an antiquated concept and indeterminate for many species, it would be very difficult to use it as a rebuilding goal. It was suggested that throughout the text where there is a reference to MSY, that the following be added: "... or other sustainable level or measurable objective specified in an approved fishery management plan."

**Review of Regulations.** There are fundamental differences between the two bills. S. 39 would overhaul Section 304 as it applies to fishery management plans and amendments and proposed regulations that accompany those plans and amendments, but because it only applies to Section 303(c) amendments, S. 39 would not treat stand-alone regulatory amendments. It would shorten the plan review process by five days from the current Act, and final regulations accompanying a plan or plan amendment could be finalized in 60 to 105 days from plan receipt, depending on the length of public comment period chosen. Though the current Act allows the Secretary to approve implementing regulations anytime between day 60 and day 95, he usually waits until day 95. Therefore, I suspect the Secretary will mainly use the longer public comment period (60 days) allowed in S.39, and therefore the final regulations will be published on day 105 compared to the current Act requirements of day 110. Thus, S. 39 will shave only about five days off Secretarial review, if the Secretary always uses the longer comment period.

H.R. 39, in contrast to S. 39, retains the Act's current schedule for plan and plan amendment review, however, it adds a schedule for regulatory amendments. The Secretary would have to make a final decision by day 75 on regulatory amendments. The Chairmen have stated their desire for a 60-day time limit on regulatory amendments. Thus, H.R. 39 responds to that need, albeit with a 75-day limit to approve regulations.

The Chairmen still want a time limit on regulatory amendments, and recommend that you consider either moving the H.R. 39 language on regulatory amendments into the Senate bill, or expanding the application of S. 39's new Section 304(b) (pp.46-48) to regulatory amendments. This could be done by changing the language in line 23 on p. 46 in S. 39 to read: "... section 303(c), or of proposed amendments to existing regulations implementing a fishery management plan in effect under this Act, which does not have the effect of amending the plan, the Secretary shall immediately initiate ..." (the new language comes from lines 1-4, p. 37 of H.R. 39). This would give the Secretary a time limit on regulatory amendments, but also some flexibility in setting the length of the comment period depending on the significance of the proposed amendment.

The only other point is that S. 39, by completely overhauling Section 304, dropped, perhaps inadvertently, a current requirement in the Act (Section 304(b)(1)(A)(ii)) that allows a proposed amendment to be implemented by default if the Secretary fails to act by the close of day 95. We request this requirement be reinstated.

Emergency Actions. The Council Chairmen strongly favor H.R. 39 which removes the Regional Director from the unanimous vote requirement for emergency actions. Concern was expressed over a required cost-benefit analysis for extensions of emergency rules because it could delay the extension, thus leading to management problems.

Transshipment Permits. The Chairmen had no comment on this issue.

North Pacific Waste Reduction. The Chairmen had no comment on this issue.

Individual Quotas. Council Chairmen oppose a moratorium on new plans and a 7-year sunset. If any sunset is required, it should be more than 10 years. The possibility of a program being discontinued will make financing of IFQs difficult and interfere with the ability to make responsible business decisions. Limited entry/IQ programs in the process of being implemented (e.g., the Gulf of Mexico red snapper program) should not be delayed by new regulations. There also were comments opposing creating new guidelines within the Act for a particular program such as IFQs. Councils already have the authority to develop limited entry programs and should be allowed to tailor programs to their regional needs. The Chairmen believe that an additional advisory committee is not necessary because of current Council review panels and procedures. However, if such a committee is mandated, the Chairmen appreciate having all eight Councils represented. A lien registry is an important issue for the tracking of IQs. On p. 52, line 15, of H.R. 39, the intent of the word "offsetting" should be clearly spelled out to be that ITQ program fees will be needed to support the program and any new fees collected will not cause diminished funding of other programs.

PFMC Tribal Member. Council Chairmen had no opposition to this proposal. However, members of the Pacific Council pointed out that it was their intent that an extra seat be added to the Council to accommodate the tribal seat. At present, the language does not reflect the addition of the seat.

Pacific Region Stock Assessment. Council Chairmen did not have a recommendation.

Fishery Impact Statements. Council Chairmen did not have a recommendation.

Negotiated Measures. Council Chairmen feel the current practice of using advisory panels is sufficient. They specifically do not want to be compelled to adopt the consensus of any advisory panel. Councils already use a variety of panels and committees to develop solutions to fishery management problems. Therefore, the Chairmen believe this section should be omitted.

Gear Evaluation. Council Chairmen were unclear as to the intent of the proposal and are not sure that it is necessary. Councils already have the option of defining permissible gears in their plans and prohibiting all others. New technologies could be tested under an experimental fishing permit.

Sustainable Fisheries/Capacity Reduction Programs. The Chairmen received a copy of a letter dated June 16, 1995 from Peter Leipzig to congressional staff concerning buy-back language in the proposed amendments, but took no formal action on the letter or on draft language in either bill. Tom Melius, staff for the Senate Commerce Committee, indicated that the provisions in S.39 were drafted before the major change of direction by Congress. It is very doubtful now that such a program would be funded.

Disaster Relief. Council Chairmen had no recommendation on this issue.

Monitoring & Research. Council Chairmen had no recommendation on this issue.

Stock Recovery Financing. Council Chairmen had no recommendation on this issue.

Highly Migratory Species. The New England Council has concerns that measures in the House draft would negate measures in the swordfish plan. They recommend that H.R. 39 language on page 27, lines 15-17, be amended as follows: "(iv) establish regulations that, to the extent practicable, minimize the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and . . . ." The Mid-Atlantic Council will submit their comments directly to the Committee. The South Atlantic Council reiterated their desire that regulation of HMS be returned to the Councils.

Driftnets. Council Chairmen had no recommendation.

National Standard 5. Council Chairmen had no recommendation.

Safety. Council Chairmen had no recommendation.

Atlantic Herring and Mackerel. Council Chairmen had no recommendation.

Incidental Catch in Gulf and South Atlantic. Council Chairmen had no recommendation.

Gulf of Mexico Fisheries. Council Chairmen had no recommendation.

Prohibited Acts. Council Chairmen had no recommendation.

Enforcement. Council Chairmen had no recommendation.

Multi-Council Designation. Council Chairmen had no recommendation.

Observers and Rights of Observers. Council Chairmen had no recommendation.

State Jurisdiction. Council Chairmen have no opposition to this measure, and in fact several Councils would like the measure to apply across the board, not just to the State of Alaska.

Civil Penalties. There was some question as to the intent of this measure. There was no Council position, but members agreed that the important issue is that violators be charged and assessed regardless of their "ability to pay."

Term Limits. This issue is not included in reauthorization, but Chairmen are requesting a clarification of Congressional intent with regard to the interpretation of the three, 3-year term limit. Chairmen feel that when a member is appointed to fill the remainder of a term, that that member's "three 3-year terms" should begin with the first full three-year term, and not include the partial term served. This clarification could be accomplished by changing the second sentence of current Section 302(b)(3) to read: "No member appointed after January 1, 1986, may serve more than three consecutive [full] terms." Chairmen also asked NMFS for a clarification of an agency policy which appears to limit appointments to only two terms.

I believe that about covers the issues we discussed. If you have questions or need clarification, please give me a call. Thanks again for coming to our meeting.

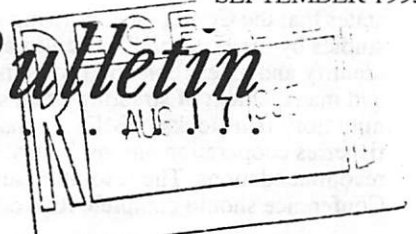
Sincerely,

  
Clarence G. Pautzke  
Executive Director

cc: Regional Council Executive Directors



# Negotiations Bulletin



*A Reporting Service for Environment and Development Negotiations*

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## SUMMARY OF THE FIFTH SUBSTANTIVE SESSION OF THE CONFERENCE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS 24 JULY - 4 AUGUST 1995

During the two-week session which took place at UN Headquarters in New York from 24 July - 4 August 1995, delegates negotiated a Conference Room Paper contained in document A/CONF.164/CRP.7, dated 19 July 1995. This paper represented the first attempt at harmonizing the Chair's Revised Draft Agreement, contained in A/CONF.164/22/Rev.1, by the Secretariat and other UN editorial advisors.

Delegates desired not only to reopen issues of substance when considering the harmonized text, but they also conceded that editorial changes had created substantive change. Informal Plenary successfully dealt with the many stylistic changes, but issues of substance were negotiated in informal consultations throughout the two-week period. Contentious issues included compliance and enforcement, high seas "enclaves," and settlement of dispute. Three days of pre-session negotiation over Article 21, dealing with subregional and regional compliance and enforcement remained unresolved despite a series of papers being tabled by the EU, Japan and the US. Informal consultations consumed much of the second week with the Chair working exceptionally long hours endeavoring to develop consensual text. "Friends of the Chair" continued to support the efforts of the Chair, Satya Nandan (Fiji), reaffirming the high regard in which he is held. Late night informal consultations eventually resulted in agreed revisions.

The closing Plenary adopted the Draft Agreement which provides for the "Implementation of the Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks." This Agreement represents a sincere attempt to secure enhanced conservation and management for high seas resources.

### A BRIEF HISTORY OF THE CONFERENCE

Conservation and management problems of high seas fisheries are not new to the UN system. During recent years the pressures on

high seas fisheries brought about by relentless and sustained over-fishing practices have grown considerably. Delegates at the Third UN Conference on the Law of the Sea (UNCLOS) agreed upon a legal framework for the management of high seas fisheries, but the regime proved unworkable because the negotiators left conservation and management problems to be resolved between States at the regional and subregional level. As pressure on fish stocks grew in the late 1980s and early 1990s, bringing about the collapse of some valuable and important commercial species, the international community was forced to confront the problem of global over-fishing.

One forum that focused on the issue of global overfishing was the Preparatory Committee for the UN Conference on the Environment and Development (UNCED). After long and difficult negotiations, participants at the Earth Summit in Rio agreed to "convene an intergovernmental conference under UN auspices with a view to promoting effective implementation of the provisions of the Law of the Sea on straddling and highly migratory fish stocks."

The resolution establishing the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (47/192) was adopted by the UN General Assembly on 22 December 1992. The resolution

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states that the Conference, drawing on scientific and technical studies by the Food and Agriculture Organization (FAO), should: identify and assess existing problems related to the conservation and management of straddling fish stocks (SFS) and highly migratory fish stocks (HMFSS); consider means of improving fisheries cooperation among States; and formulate appropriate recommendations. The resolution also stipulated that the Conference should complete its work "as early as possible."

### **ORGANIZATIONAL SESSION**

The organizational session for the Conference was held at UN Headquarters in New York from 19-23 April 1993. The participants adopted the Rules of Procedure and agenda, appointed a Credentials Committee, and agreed on how its substantive work would be carried out. Ambassador Satya N. Nandan (Fiji) was elected Chair of the Conference. Nandan was asked to prepare a paper containing a list of substantive subjects and issues as a guide for the Conference, and delegations were requested to submit their proposals to the Secretariat.

### **FIRST SUBSTANTIVE SESSION**

The first substantive session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks met from 12-30 July 1993 at UN Headquarters in New York. The Plenary addressed the major issues before it, guided by the Chair's summary. The Plenary held formal sessions on each of the issues outlined and then adjourned to allow informal consultations to continue. At each of these informal meetings, Nandan presented the group with a working paper that summarized the issues raised in the Plenary and in papers submitted by interested delegations.

The major issues discussed at the first session were: the nature of conservation and management measures to be established through cooperation; the mechanisms for international cooperation; regional fisheries management organizations or arrangements; flag State responsibilities; compliance and enforcement of high seas fisheries management measures; responsibilities of port States; non-parties to a subregional or regional agreement or arrangement; dispute settlement; compatibility and coherence between national and international conservation measures for the same stocks; special requirements of developing countries; review of the implementation of conservation and management measures; and minimum data requirements for the conservation and management of these stocks. At the conclusion of the session, the Chair tabled a draft negotiating text contained in document A/CONF.164/13, which served as the basis for negotiation at the second substantive session of the Conference.

### **SECOND SUBSTANTIVE SESSION**

The second substantive session of the Conference met from 14-31 March 1994 at UN Headquarters in New York. The delegates continued debate left unresolved at the end of the previous session and their review of the Chair's negotiating text contained in document A/CONF.164/13\*.

The first day of the Conference consisted of general statements and the Conference then convened in informals until the end of the second week when informal-informals were held in an attempt to prepare a new "clean" version of the text. These sessions, which were closed to NGOs, were held until the middle of the third week. Consequently, five out of fourteen days of negotiation were carried out behind closed doors. On the final day of the Conference, the Chair issued his Revised Negotiating Text (RNT) contained in document A/CONF.164/13/Rev.1.

### **THIRD SUBSTANTIVE SESSION**

The third substantive session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was held at UN Headquarters in New York from 15-26 August 1994. During

the first week delegates reviewed the Chair's RNT. General comments were delivered in the Plenary and consultations were carried out in informal-informals. During the second week, the Chair issued a Draft 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 "Draft Agreement"), based on the comments that delegates had made on the RNT. Informal consultations on the most difficult issues were then carried out between the Chair and interested delegations. Delegates reacted to the text and the last version of the Draft Agreement was issued in document A/CONF.164/22 before the Conference adjourned.

### **FOURTH SUBSTANTIVE SESSION**

The fourth substantive session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was held at UN Headquarters in New York from 27 March until 12 April 1995. General statements were delivered in the Plenary followed by informal Plenary negotiations on the Chair's Draft Agreement A/CONF.164/22. Two contentious issues dealing with high seas "enclaves" and compliance and enforcement, were discussed in informal consultations but considerable disagreement on changes to the text remained. The Chair circulated a revised text of his Draft Agreement contained in two conference room papers A/CONF.164/CRP.6 and A/CONF.164/CRP.6/Add.1 to a reconvened Plenary during the second week of negotiations. Delegates stalled a composite and speedy review of the Chair's revised text at the end of the second week. Further discussion in Plenary was canceled and additionally the Chair suspended all other informal consultations. Plenary reconvened on the final morning when delegates collected the Chair's composite Revised Draft Agreement contained in document A/CONF.164/22/Rev.1 which was available in all languages. General statements were made on the Revised Draft Agreement immediately prior to the closure of this session.

## **REPORT OF FIFTH SUBSTANTIVE SESSION**

The fifth substantive session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was held at UN Headquarters in New York from 24 July - 4 August 1995. General statements were delivered in the Plenary followed by informal Plenary negotiations on the Chair's Draft Agreement A/CONF.164/22/Rev.1. The Chair circulated A/CONF.164/CRP.7 representing the first attempt at harmonizing the text in all UN languages. Delegates wished to reopen debate on some of the substance contained in A/CONF.164/22/Rev.1, and this became more evident when the delegates said the editorial and stylistic changes effected in A/CONF.164/CRP.7 altered substance. Informal Plenary was convened after general statements, and in addition the Chair held a series of informal consultations, the most difficult and prolonged of which dealt with compliance and enforcement and enclosed and semi-enclosed seas, including areas of high seas surrounded entirely by an area under the national jurisdiction of a single State. As issues were agreed the Chair reconvened informal Plenary to update delegates on the state of negotiations. On Thursday of the second week, informal consultations were successfully concluded. Nandan reported to Plenary on the final day that said the Draft Agreement before delegates represented an "historic instrument that is far-sighted, far-reaching, bold and revolutionary." Delegates adopted the Draft Agreement, and at the conclusion of the session, they afforded Nandan a standing ovation. The adoption of the Draft Agreement will be opened for signature during the General Assembly meeting in early December.

## THE AGREEMENT

The negotiations resulting in the Agreement were conducted over six sessions totaling fourteen weeks. In addition, several intersessional meetings were held in Buenos Aires, Geneva, Tokyo, Washington, DC, and New York. Informal consultations continued at other levels. The Agreement consists of forty pages of text contained in document A/CONF.164/33, and represents a refinement of the issues discussed at the first substantive session. Unlike in other multilateral negotiations, no text was bracketed. The Chair resolved to reach consensus agreement on each article without resorting to brackets or voting. This format follows the procedures adopted during the UNCLOS negotiations.

To facilitate greater understanding of the Agreement, the following is a summary of each article in the agreed text. The Final Act, which stands alone, is also reviewed. Some editorial and stylistic changes that will not affect the substance are likely to be made prior to the Agreement's opening for signature in December. Minor amendments to the Final Act are also possible.

### THE PREAMBLE

The ten-paragraph Preamble recalls the relevant provisions of UNCLOS while focusing on the need to ensure the long-term conservation and sustainable use of SFS and HMFS, seeks to improve cooperation between States, and specifically calls for more effective enforcement by flag, port and coastal States of measures to conserve and manage fish stocks. The Preamble underlines the particular problems identified in Agenda 21, Chapter 17, Programme Area C, which include: over-utilization of resources, unregulated fishing practices, industry over-capitalization, vessel reflagging, excessive fleet size, unreliable data bases, and insufficient selective gear. Provisions supporting financial, scientific and technological assistance for developing States in support of their effective participation in the conservation, management and sustainable utilization of SFS and HMFS were included. The Preamble states that matters not regulated by the Convention (UNCLOS) or by the Agreement will continue to be governed by the general rules and principles of international law.

### PART I - GENERAL PROVISIONS

**ARTICLE 1 - USE OF TERMS AND SCOPE:** This Article contains definitions for convention, conservation and management measures, fish, arrangement, and State Parties. The discord concerning regional and sub-regional organizations was reflected in the debate on the definition of arrangement, which means a cooperative mechanism established for the purpose of establishing conservation and management measures. Some States said it should more clearly incorporate features of transparency and openness, a distant water fishing nation (DWFN) characterized it as too broad, while coastal States requested a direct reference to coastal state participation. The definitions of straddling fish stocks and non-target species were transferred to the body of the text.

**ARTICLE 2 - OBJECTIVE:** Article 2 was accepted without amendment. It states that the objective of the Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provision of the Convention.

**ARTICLE 3 - APPLICATION:** This article states that the Agreement applies to the conservation and management of SFS and HMFS beyond areas of national jurisdiction, except that Articles 6 and 7 apply also to such stock within areas under national jurisdiction. Paragraph (3) requires due consideration to the respective capacities of developing States to apply Article 5, 6 and 7 within areas under national jurisdiction and their need for assistance. DWFNs unsuccessfully proposed adding a new paragraph that would allow Parties to exempt their fishing vessels operating in regions where States have not yet declared an

exclusive economic zone (EEZ). Developing countries sought application of paragraph (3) both within and outside areas of national jurisdiction, but developed countries argued against exemptions and said that, in addition to artisanal fishworkers, many developing countries have global fleets.

**ARTICLE 4 - RELATIONSHIP BETWEEN THIS AGREEMENT AND THE CONVENTION:** Nothing in the Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

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

**ARTICLE 5 - GENERAL PRINCIPLES:** This Article describes the measures necessary to give effect to the duty to cooperate in accordance with the Convention. States shall: adopt measures to ensure long-term sustainability and promote the objective of optimum utilization; ensure that such measures are based on the best scientific evidence available and designed to maintain maximum sustainable yield as qualified by relevant environmental and economic factors; apply the precautionary approach in accordance with Article 6; assess the impacts of fishing and other activities on target stocks and species belonging to the same ecosystem; adopt measures for species belonging to the same ecosystem with a view to maintaining or restoring populations above levels at which their reproduction may be seriously threatened; minimize pollution, waste, discards, catch by abandoned gear, and catch of non-target species through measures including, to the extent practicable, the use of selective fishing gear.

States shall also: protect biodiversity in the marine environment; take measures to prevent or eliminate over-fishing and excess capacity; take into account the interest of artisanal and subsistence fishers; collect and share, in a timely manner, complete and accurate data on fishing activities as set out in Annex I; promote and conduct scientific research and develop appropriate technologies; and implement and enforce conservation and management measures through effective monitoring, control and surveillance.

An informal working group composed of several Latin American States was convened to propose modifications to Annex I, although some States objected that Annex I was complete. The required use of selective gear generated considerable controversy during informal consultations, and provoked several strong statements from NGOs. However, the issue received surprisingly sparse comment on the floor during informal plenary. The US proposed alternative language for Article 5(f) that required promotion, but not the use of, selective gear, but some delegations objected. Nonetheless, the final text qualifies all the requirements of Article 5 to "coastal States and States fishing on the high seas" and requires the development and use of selective gear "to the extent practicable."

**ARTICLE 6 - APPLICATION OF THE PRECAUTIONARY APPROACH:** This Article provides that States shall apply the precautionary approach widely to conservation, management and exploitation of SFS and HMFS. Paragraph (2) holds that States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of scientific or adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures, and paragraph (3) provides requirements for implementation. Discussion focused on the scope and strength of the language, with Peru and Uruguay proposing an additional paragraph which would apply when fish stocks are in danger of depletion because of factors other than natural phenomena. The US, the EU, Norway and the Russian Federation all commented that the

word "apply" in paragraph (3), should not be changed to "observe" because the connotation is less stringent. DWFN and coastal states disagreed over the insertion of the word "widely" when referring to application, and delegations made several suggested amendments to the language, leading the Chair to prompt delegates to "cool off."

**ARTICLE 7 - COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES:** This Article states with respect to SFS, coastal States and States whose nationals fish for such stocks in the adjacent high seas area shall seek to agree upon the measures necessary for the conservation of these stocks. With respect to HMFS, coastal States and others who fish for such stocks in the region shall cooperate with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region. It also requires, *inter alia*, that conservation and management measures within EEZs and the high seas shall be compatible, and describes the factors to be accounted for in determining compatibility.

States shall also "make every effort to agree" on compatible measures, and absent an agreement, may invoke dispute settlement procedures. Until agreement is reached, States shall endeavor to enter into "provisional arrangements of a practical nature." Delegates again voiced disagreement over the balance between coastal States and DWFN interests, particularly regarding the elements for determination of compatible measures. The EU said that the linkages with other articles in the Agreement were not being considered in terms of the overall balance of the text and the Article must be made more explicit. Coastal states, however, sought to expand the language requiring that biological unity and characteristics be accounted for, thereby increasing consideration for coastal State measures.

### **PART III - MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

**ARTICLE 8 - COOPERATION FOR CONSERVATION AND MANAGEMENT:** States shall pursue cooperation in relation to SFS and HMFS through appropriate subregional fisheries management organizations or arrangements, and shall enter into consultations in good faith and without delay. States that have a "real" interest in the fisheries concerned may become members of such organizations, and only those States which are members of such an organization shall have access to the fishery resources. The EU, supported by Japan, Poland and the Republic of Korea, distributed a proposed draft due to elements of imbalance regarding the activities of coastal States and DWFNs on the high seas, and stressed that the open character of membership without limitations must be recognized. Coastal States asserted that the text does not offer enough safeguards against the entry of States with no concrete interest in the zone. The US, Norway, Namibia, the Solomon Islands, and Australia for the FFA stated that the text allows for an appropriate degree of flexibility. A revised Article 8(3) was presented in informal consultations on membership and accepted. Peru and Uruguay proposed an amended version of paragraph (5)(*bis*) that addressed the concerns of some coastal States that failure of one or more States to cooperate pursuant to Article 5 should not interfere with the establishment of organizations or arrangements by other States in the region or subregion. The redraft was not supported by some delegates who stated that the requirement of cooperation is covered in Articles 8(1) and 17(1). Others agreed that the proposed changes did not strengthen the text and could be used to "opt out." States supporting the proposal said that it was not designed to create loopholes and not specifically aimed at DWFNs.

**ARTICLE 9 - SUBREGIONAL OR REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS:** In establishing subregional or regional organizations, States shall agree, *inter alia*, on the stocks to which conservation and management measures shall apply, the area of

application, the relationship between the work of the new organization and relevant existing organizations, and the mechanisms by which the organization will obtain scientific advice.

### **ARTICLE 10 - FUNCTIONS OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS:**

This Article outlines requirements for States in fulfilling their obligation to cooperate through regional fisheries management organizations; to agree on participatory rights such as allocations of allowable catch, agree on standards for collection of data, and agree on decision-making procedures. The Russian Federation disagreed with provisions regarding transparency in internal decision-making processes, and stated that there was a contradiction between the obligation of States and the rights and procedures of regional organization. The Chair, however, replied that the general debate and NGO interventions indicated the importance of the issue.

**ARTICLE 11 - NEW MEMBERS OR PARTICIPANTS:** In determining the participatory rights for new members of a sub-regional or regional organization, States shall take into account, *inter alia*: the existing level of fishing effort in the fishery; the respective interests, fishing patterns and fishing practices of new and existing members; the needs of coastal fishing communities which are dependent mainly on fishing for the stocks; and the interest of developing States.

### **ARTICLE 12 - TRANSPARENCY IN ACTIVITIES OF SUBREGIONAL AND REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS AND ARRANGEMENTS:**

This issue was one of the major concerns for NGOs at the Conference. The US made a proposal to amend the text with three objectives in mind: to assure that NGOs have the right to attend meetings of such organizations as "participating" observers; that records of the meetings, data and other information be made available in a timely fashion to NGOs; and that such organizations shall be barred from levying excessive fees that would exclude or prevent NGOs from participating. Some delegates expressed concern that NGOs would be given better treatment than States, but much of the proposal was eventually included in the text of the Agreement.

**ARTICLE 13 - STRENGTHENING OF EXISTING ORGANIZATIONS AND ARRANGEMENTS:** States shall cooperate to strengthen existing sub-regional and regional organizations in order to improve their effectiveness in establishing and implementing conservation and management measures.

**ARTICLE 14 - COLLECTION AND PROVISION OF INFORMATION AND COOPERATION IN SCIENTIFIC RESEARCH:** States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfill their obligations under this Agreement. The Article specifies data collection responsibilities, the duty to agree on format and analytical techniques, and the duty to cooperate to strengthen scientific research capacity.

**ARTICLE 15 - ENCLOSED AND SEMI-ENCLOSED SEAS:** This Article calls for States to take into account the natural characteristics of enclosed and semi-enclosed seas when implementing the Agreement, and to act in a manner consistent with Part IX and other relevant provisions of UNCLOS. This issue caused considerable debate at times, with some States arguing that, due to geographic and environmental peculiarities in these areas, the special concerns of coastal States should be given emphasis. Delegates cited support for this interpretation in Part IX of UNCLOS, and a number of proposals were tabled regarding this Article. Consensus was eventually reached and the text was harmonized with the relatively weak wording, "States shall take into account the natural characteristics." This language was supported by a reference to Part IX of the Convention. The comparative ease with which this issue was resolved was partially due to the subsidiary place it had in relation to Article 16.

**ARTICLE 16 - AREAS OF HIGH SEAS SURROUNDED BY AN AREA UNDER THE NATIONAL JURISDICTION OF A SINGLE STATE:** This Article concerning "enclaves" proved to be highly contentious and resulted in a number of informal consultations. Much of the strong sentiment arose from conflicts over access to fishing in the Sea of Okhotsk. The delegates from the Russian Federation, whose national jurisdiction surrounds this area, and DWFNs such as Poland, squared off over questions of high seas management and unilateral action. At times debate was heated, and numerous references were made to possible unilateral measures including the use of naval forces. Proposals and counter-proposals were plentiful on this topic, again with an eye to the special concerns of the coastal State versus the rights of DWFNs in the high seas. Although the Russian Federation has bilateral agreements with many of these DWFNs, including Poland, resistance against global application was strong. The Russian Federation feared a possible repetition of the situation that occurred in the Bering Sea "Donut Hole," while the DWFNs stated that bilateral agreements were already in place, and questioned the international codification of an Article that could be seen to allow coastal State control over areas of high seas. Resolution of this issue came late Thursday evening, as the delegates from the Russian Federation and Poland finally received instructions from their Governments. The agreed upon text centers on, among other things: cooperation between coastal States and DWFNs; the adoption of compatible conservation and management measures; the rights, duties and interests of the coastal States; use of the best scientific evidence; agreement on monitoring, control, and enforcement measures to ensure compliance; and provisional arrangements in the event of non-agreement.

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

**ARTICLE 17 - NON-MEMBERS OF ORGANIZATIONS AND NON-PARTICIPANTS IN ARRANGEMENTS:** This Article deals with the rights and responsibilities of a State that is not a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement. It establishes the obligation to cooperate with conservation and management measures being applied in the subregion or region, assures that non-members and non-participants do not allow vessels flying their flag to fish for SFS or HMFS in these areas, seeks to ensure cooperation between member and participant States and non-member and non-participant States, and attempts to provide for information exchange and deterrence of activities which might undermine conservation and management measures in place.

#### **PART V - DUTIES OF THE FLAG STATE**

**ARTICLE 18 - DUTIES OF THE FLAG STATE:** This Article addresses the duties of the flag State and measures to ensure that vessels flying its flag comply with subregional and regional conservation and management measures. Negotiations were difficult as the Article covers issues such as inspection, monitoring, control and surveillance. Some of these elements merited special consideration, and were moved to other Articles in the text. This Article is closely linked to enforcement procedures, which include provisions for boarding and inspection.

#### **PART VI - COMPLIANCE AND ENFORCEMENT**

**ARTICLE 19 - COMPLIANCE AND ENFORCEMENT BY THE FLAG STATE:** The Articles in Part VI were the most difficult and hotly debated of the Agreement. The development of the text was protracted, involving numerous informal consultations and heated exchanges. The five Articles that make up Part VI must be examined as a whole for a thorough understanding of the difficulties faced by the delegates in arriving at a harmonized text.

Article 19 deals with the obligations of the flag State regarding compliance and enforcement of conservation and management measures implemented through the Agreement. Discussion on this Article over the course of the negotiations centered on the determination of guilt or innocence, the responsibilities of the flag State in the case of a violation, and the imposition of penalties. Like Article 18, this Article is closely linked to the highly contentious issue of boarding and inspection. The final text calls for the flag State to: enforce measures regardless of where the violations occur; investigate fully and promptly any alleged violation; ensure its vessels provide required information to the investigating authority; ensure that a vessel involved in a violation does not engage in high seas fishing until outstanding sanctions are addressed; and ensure expeditious judicial proceedings and sanctions of adequate severity.

**ARTICLE 20 - INTERNATIONAL COOPERATION IN ENFORCEMENT:** This Article addresses the rights, duties and obligations of flag States, coastal States, and subregional or regional organizations or arrangements. It examines issues such as: cooperation in compliance and enforcement; flag State investigations and assistance from other States, organizations or arrangements; identification and reporting of vessels alleged to be undermining the effectiveness of subregional, regional, or global conservation and management measures; gathering and sharing of evidence; and action taken in accordance with international law to deter vessels from activities which violate or undermine conservation and management measures. Discussion on these issues was heated, particularly regarding the question of cooperation between flag States and coastal States and the authorization to board and inspect. Another area of contention was the deterrence of vessels engaged in activities that violate the conservation and management measures of a subregion or region.

**ARTICLE 21 - SUBREGIONAL AND REGIONAL COOPERATION IN ENFORCEMENT:** This Article and that of former Article 21(*bis*), now Article 22, remained contentious throughout three years of negotiation. Considerable intersessional activity was devoted to work on these articles. The high level of disagreement on this issue led the US to host an informal and select workshop in Washington, DC, in June 1995. A paper from this meeting served as the backdrop for three days of pre-session activity prior to the final session of the Conference. Alternative proposals were tabled by Japan and the EU. Several sessions of informal consultations were devoted to this topic and consensus remained elusive until the eleventh hour. Flag States argued that balance had to be maintained throughout the text, while the coastal States sought to enhance their position. Of particular concern to the flag States, was that the "right should not precede the rule" in respect of boarding and inspection procedures. In one three-hour sitting of negotiations in informal consultations, only three paragraphs were considered. Several proposed amendments were tabled throughout the session exclusive of several revised texts prepared by the Chair.

Much of the discussion focused on boarding and inspection procedures and the determination of an infringement of the rules with regard to defining a "serious violation." The response time afforded the flag State, following boarding and inspection revealing a violation was eventually agreed at three days. A watering down and reduction of the "shopping list" of serious violations was not considered desirable and the Chair ruled accordingly. Examples of nine serious violations are given. Of particular concern to the Flag-of-Convenience and developing flag States was that not only the safety of the ship should be guaranteed, following boarding, but the safety of the crew should be afforded the same status. The Chair was concerned that the "prompt release of vessels should apply throughout the oceans." Specific reference to Article 292 of the Convention, which deals with prompt release of vessel and crew, does not now feature in this Article. The procedures for boarding and inspection are qualified in Article 22.



**ARTICLE 22 - BASIC PROCEDURES FOR BOARDING AND INSPECTION PURSUANT TO ARTICLE 21:** Paragraph (2) of Article 21 deals with the establishment of procedures for the boarding and inspection, and Article 22 sets out the procedures for boarding and inspection that shall not discriminate against non-members of the organization or non-participants in the arrangement. The Article imposes requirements on the inspecting States with regard to the authorized duties of the inspector. This covers: the presentation of credentials to the vessel master; the requirement to initiate notice to the flag State at the time of boarding and inspection; non-interference in the master's ability to communicate with the flag State authorities; the provision of a copy of the boarding and inspection report to the master and flag State authorities; the prompt departure from the vessel by the inspector following investigation in which no evidence of a serious violation is found; and avoidance of the use of force except when and to the degree necessary.

The Article authorizes the inspector to perform certain duties, and mandates that the flag State require its vessel masters to conform to certain rules, including the inspector's safe disembarkation. In the event that the master of a vessel refuses to accept boarding and inspection, the flag State is required to direct the master to submit to immediate boarding, and shall suspend the vessels authorization to fish if the master does not comply. This Article was subject to intense debate and negotiation before consensus could be struck because flag States wanted balance in the text. In informal Plenary towards the end of the session, Malta attempted to undermine the provisions of the Article, by requiring that the inspecting State give simultaneous notification of boarding to the flag State.

**ARTICLE 23 - MEASURES TAKEN BY A PORT STATE:** This Article deals with the rights and duties of the port State to take measures to promote the effectiveness of subregional, regional and global conservation and management measures. Authority is vested in the port State to inspect documents, fishing gear and catch on board fishing vessels, only when such vessels are voluntarily in its ports. States may empower national authorities to prohibit landings and transshipments if the catch has been taken in a manner which undermines the conservation and management measures to which the Article refers.

#### **PART VII - REQUIREMENTS OF DEVELOPING STATES**

**ARTICLE 24 - RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES:** States shall give full recognition of the special requirements developing States and shall, either directly or through the United Nations Development Programme (UNDP), the FAO, the Global Environment Facility (GEF), the UN Commission on Sustainable Development (CSD) or other appropriate international and regional organizations, provide assistance. States shall take into account the vulnerability of developing States dependent on marine resources, the need to avoid adverse impacts on subsistence, small-scale and artisanal fishers, and the need to ensure that a disproportionate burden of conservation action does not fall onto developing States.

**ARTICLE 25 - FORMS OF COOPERATION WITH DEVELOPING STATES:** This Article requires cooperation to enhance the ability of developing States to conserve and manage SFS and HMFS, to assist developing States in participation of high seas fisheries, and to facilitate the participation of developing States in regional and subregional organizations. Assistance shall be directed specifically toward data collection, stock assessment, scientific research, monitoring, control and surveillance. Unlike earlier sessions dealing with the provisions of this Article, no Caribbean voice was exercised during the final session.

**ARTICLE 26 - SPECIAL ASSISTANCE IN THE IMPLEMENTATION OF THIS AGREEMENT:** States shall

cooperate to establish special funds to assist developing States in the implementation of this Agreement, including meeting the costs involved in any proceedings for the settlement of disputes. States and international organizations should also assist in establishing new subregional or regional organizations.

#### **PART VIII - PEACEFUL SETTLEMENT OF DISPUTES**

**ARTICLE 27 - OBLIGATION TO SETTLE DISPUTES BY PEACEFUL MEANS:** In this Article, States are obligated to settle disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, consultation with regional agencies, or other peaceful means of their own choosing.

**ARTICLE 28 - PREVENTION OF DISPUTES:** This Article provides that all States must cooperate in order to prevent disputes and shall effectuate this aim by agreeing on expeditious decision-making procedures within regional and subregional fisheries management organizations and arrangements to strengthen existing decision-making procedures.

**ARTICLE 29 - DISPUTES OF A TECHNICAL NATURE:** States may refer disputes of a technical nature to an *ad hoc* panel established by the States concerned. Such a panel is to work with the involved States to resolve the matter expeditiously, without recourse to binding dispute settlement procedures.

**ARTICLE 30 - SETTLEMENT OF DISPUTES:** In this Article, Part XV of UNCLOS applies to all disputes between States Parties to the Agreement concerning the interpretation or application of the Agreement or of subregional, regional or global fisheries agreements related to SFS or HMFS to which they are a party, regardless of whether they are parties to UNCLOS. Article 30 also provides that the dispute resolution provisions of Article 287 of UNCLOS shall apply to all States Parties to the Agreement unless at the time of ratification of the Agreement, or any time thereafter, the State submits a declaration accepting an alternative means of dispute settlement. This holds true regardless of when the State is a party to UNCLOS. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention as well as any relevant subregional, regional or global fisheries agreements or any other generally accepted standards for the conservation and management of living marine resources under this Agreement, provided they are compatible to UNCLOS.

**ARTICLE 31 - PROVISIONAL MEASURES:** Pending the settlement of a dispute in accordance with the measures found in the Agreement, Parties are to make every effort to adopt provisional arrangements that are practical. The court or tribunal entertaining the dispute may prescribe appropriate provisional measures without prejudice to Article 290 of UNCLOS.

**ARTICLE 32 - LIMITATIONS ON APPLICABILITY OF PROCEDURES FOR THE SETTLEMENT OF DISPUTES:** This Article states that Article 297, paragraph 3 of UNCLOS applies to the Agreement.

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

**ARTICLE 33 - NON-PARTIES TO THIS AGREEMENT:** States Parties to the Agreement are required to encourage non-party States to become parties and adopt laws and regulations consistent with the Agreement's provisions. States Parties are also to take measures consistent with the Agreement and international law to deter vessels flying the flag of non-party States from activities that undermine the effective implementation of the Agreement.

#### **PART X - GOOD FAITH AND ABUSE OF RIGHTS**

**ARTICLE 34 - GOOD FAITH AND ABUSE OF RIGHTS:** This Article provides that States Parties must fulfil the obligations assumed under the Agreement in good faith and not in a manner that would constitute an abuse of right.



## **PART XI - RESPONSIBILITY AND LIABILITY**

### **ARTICLE 35 - RESPONSIBILITY AND LIABILITY:**

Article 35 states that in accordance with international law, States Parties shall be liable for damages or losses attributable to them arising out of implementation of this Agreement.

## **PART XII - REVIEW CONFERENCE**

**ARTICLE 36 - REVIEW CONFERENCE:** In this Article, provisions are made for the UN Secretary-General to convene a conference to review the effectiveness of the Agreement in securing the management and conservation of SFS and HMFS four years after the Agreement's entry into force. All States Parties to the Agreement as well as those States entitled to become parties shall be invited to participate as well as intergovernmental and non-governmental organizations who may participate as observers.

## **PART XIII - FINAL PROVISIONS**

**ARTICLE 37 - SIGNATURE:** This Article states that the Agreement will be open for signature on 4 December 1995, at the UN Headquarters by all States and other entities referred to in Article 305, paragraph 1(c), (d), and (e) of UNCLOS, and will remain so for 12 months.

**ARTICLE 38 - RATIFICATION:** Article 38 states that the Agreement is subject to ratification, acceptance and approval by States and other entities referred to in Article 305, paragraphs 1(c), (d), and (e) of UNCLOS, and to formal confirmation in accordance with Annex IX of the Convention by the entities referred to in Article 305, paragraph 1(f) of UNCLOS. The instruments of ratification, acceptance, approval or formal confirmation are to be deposited with the UN Secretary-General.

**ARTICLE 39 - ACCESSION:** The Agreement is to remain open for accession by States and other entities noted in Article 305, paragraphs 1(c), (d) and (e) of UNCLOS. Accession by entities noted in Article 305, paragraph 1(f) of UNCLOS shall be in accordance with Annex IX of UNCLOS. Instruments of accession are to be deposited with the UN Secretary-General.

**ARTICLE 40 - ENTRY INTO FORCE:** The provisions of this Article require the Agreement to enter into force for each State or entity that ratifies or accedes to it 30 days following the date of the thirtieth instrument of ratification, acceptance, approval, formal confirmation or accession.

**ARTICLE 41 - PROVISIONAL APPLICATION:** The Agreement shall be applied provisionally following its entry into force by a State or entity which consents to provisional application via notification of the depositary in writing. A State's provisional application of the Agreement shall terminate upon the Agreement's entry into force, or upon the State's notification of its intent to terminate provisional application.

**ARTICLE 42 - RESERVATIONS AND EXCEPTIONS:** No reservations or exceptions may be made to the Agreement.

**ARTICLE 43 - DECLARATIONS AND STATEMENTS:** This Article qualifies Article 42 of the Agreement, which does not prevent States from making declarations or statements designed to harmonize its laws and regulations with the provisions of the Agreement upon that State's ratification, acceptance, approval, formal confirmation or accession to the Agreement.

**ARTICLE 44 - RELATION TO OTHER AGREEMENTS:** The Agreement shall not alter the rights and obligations of States Parties arising from other agreements that are compatible. The Article also states that two or more States Parties may conclude agreements modifying or suspending operations of the provisions of the Agreement, exclusive only to them, provided that such modifications do not detract from the effective execution of the objects and purposes of the Agreement, or from other States enjoyment of their rights embodied in the Agreement. States

wishing to conclude such agreements shall notify the depositary of this Agreement.

**ARTICLE 45 - AMENDMENT:** A State Party may propose an amendment and request the convening of a conference to consider it. The decision-making procedure applicable at the amendment conference shall be the same as that applicable during this Conference.

**ARTICLE 46 - DENUNCIATION:** A State Party may denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation.

**ARTICLE 47 - PARTICIPATION BY INTERNATIONAL ORGANIZATIONS:** This Article holds that Annex IX provisions of UNCLOS will apply in cases where an international organization does not have competency, except that the first sentence of Article 2 and Article 3 (1) shall not apply. In cases where the international organization claims competence over all the matters governed by the Agreement, the organization will become the negotiating body and its member States shall not become State Parties, except with respect to their territories for which the international organization has no responsibility. In informal consultations, the Chair urged delegates not to create any impediment or conditions upon the EU acting as lead negotiator in matters over which they have competency. According to Annex IX, an international organization may sign UNCLOS only if a majority of its members are signatories, and following the same procedure for this Agreement could make EU participation a protracted process.

**ARTICLE 48 - ANNEXES:** Unless expressly provided, a reference to this Agreement or one of its Parts includes a reference to the Annexes, which may be revised by States Parties.

**ARTICLE 49 - DEPOSITARY:** The Secretary-General of the UN shall be the depositary of this Agreement and any amendments or revisions thereto.

**ARTICLE 50 - AUTHENTIC TEXTS:** The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

## **ANNEX I - STANDARD REQUIREMENTS FOR COLLECTION AND SHARING OF DATA**

Seven articles constitute the standard requirements for collection and sharing of data: general principles, principles of data collection, compilation and exchange; basic fishery data; vessel data and information; reporting; data verification; and, data exchange. Often subject to disagreement between the DWFNs and coastal States, because of the need to maintain a fair and equitable balance, the provisions of this Annex represent a major step forward in the obligatory collection and dissemination of data. Coastal States, especially those from the Latin American region, were extremely protective of data collected and said that national legislation required that it should not be disseminated. Last minute proposals by Chile, supported by a handful of Latin American States, to alter issues of substance in the text, did not generally prevail. But the provisions of the chapeau in Article 3(2) were watered down by referring to "information" rather than "scientific information." The provisions of this Annex are fundamental tools for basic fisheries conservation and management objectives.

## **ANNEX II - GUIDELINES FOR APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

Annex II establishes the guidelines for the application of the precautionary reference points. Article 6 paragraphs (1) and (3) require that States apply the precautionary approach widely, and that they shall specifically apply the guidelines as set out in Annex

II. The provisions of this Annex were constituted from a Working Group established by the Conference in the Spring of 1994 and from technical papers submitted by the FAO. The guidelines and their application represent a significant step forward in fisheries conservation and management, in that it recognizes that the fishing mortality which generates the maximum sustainable yield should be regarded as a minimum standard for limit reference points. It requires two types of precautionary reference points be used — conservation or limit reference points, and management or target reference points. The former sets the boundaries to constrain harvesting within safe biological limits within which stocks can produce the maximum sustainable yield, while the latter is intended to meet management objectives.

### THE FINAL ACT

The **Draft Final Act** of the Conference summarizes key events that took place during the three years of negotiations leading up to and including the adoption of the Agreement. **Part I**, the introduction, chronicles the establishment of the Conference as called for in Chapter 17, paragraph 49, of Agenda 21. **Part II** notes the location and dates of the Conference's six sessions. **Part III** provides a listing of Conference participants including States, organizational representatives, associate members of regional commissions, representatives of national liberation movements, specialized agencies, intergovernmental organizations and non-governmental organizations. The Conference officers and the composition of Conference committees are given in **Part IV**.

**Part V** provides a synopsis of the work completed during the six Conference sessions and includes text of draft resolutions I and II, dealing with the early and effective implementation of the Agreement, and the reports on developments by the UN Secretary-General, respectively.

### CLOSING PLENARY SESSION

The Chair opened the final session of the Conference at 12:05 pm and stated that the agenda would cover: the report of Credentials Committee Chair; adoption of the Agreement; the statement of the Conference Chair; resolutions in the Draft Final Act to be adopted; and a list of speakers.

**Amb. Alberto Luis Daverede** of Argentina, Chair of the Credentials Committee, stated that the Committee had met on 3 August 1995 and prepared documents A/CONF.164/31 and A/CONF.164/34. He said that credentials had been submitted to the Secretary-General in the form provided for by rule 4, paragraph 1, of the Rules of Procedure by a number of countries. He further noted that with appointments of representatives communicated by cable, credentials and appointments with respect to this session had been received from 112 States and the EU. He outlined two recommendations by the Credentials Committee regarding the acceptance of representatives, and encouraged others to make their submissions expeditiously. The Chair then stated that paragraph (6) of document A/CONF.164/34 contains the recommendation of the Credentials Committee and asked for the agreement of the delegates regarding its adoption. It was adopted.

The Chair then introduced document A/CONF.164/33 dated 3 August 1995. This document represents the agreed text in its final version, and he said it is available in all languages. The Chair recommended no vote be taken. The text was adopted and delegates applauded.

The Chair stated that delegates had just adopted an historic instrument, the provisions of which are practical, realistic and firmly based on UNCLOS. He noted that the Agreement is built on three essential pillars: it sets out principles on which conservation and management must be based including the precautionary approach and the use of the best scientific information; it ensures that conservation and management measures are complied with and adhered to, with primary responsibility reaffirmed with the flag State and a framework for action by other States; and, it provides

for the peaceful settlement of disputes. The Chair underscored the fact that these pillars allow for a framework of cooperation, to replace conflict. In providing this framework, the Agreement, *inter alia*: establishes detailed minimum standards for measures for conservation and management of SFS and HMFS; ensures compatibility and coherence in these measures in areas under national jurisdiction and on the high seas; ensures that effective mechanisms exist for compliance and enforcement on the high seas; and, recognizes the special requirements of developing States. The Chair pointed out that regional and subregional fisheries management organizations and arrangements will play a pivotal role and stated that the full cooperation of the international community is imperative. He praised the FAO for its work in providing technical advice to the Conference, and said that the Code of Conduct and the Agreement will work together to strengthen conservation and management practices for fisheries worldwide. Nandan thanked the Vice Chairmen, colleagues from the Pacific, and the Secretariat for their invaluable assistance in this process. He said that delegates should feel proud of the results achieved, and urged rapid implementation of the Agreement. He said that it was a great personal honor for him to have been elected Chairman of the Conference, and expressed his gratitude for the privilege of working with such distinguished and highly competent friends and colleagues. The Chair's statement was followed by prolonged applause.

**CANADA: Hon. Brian Tobin, Minister of Fisheries and Oceans**, stated that an important missing chapter from the Law of the Sea had been written at this Conference. He noted that participants in the Conference had become aware of the urgent need for effective international controls given the state of the world's fisheries, and complemented the creativity applied by all parties in the pursuit of this goal. Tobin stated that regional fisheries management organizations play a fundamental role, and that the use of the precautionary approach, compatibility of management decisions for areas under national jurisdiction and high seas, and compulsory binding dispute settlement are the keys to this role. He stated that Canada has strongly supported this Conference and has shown patience and forbearance with foreign overfishing of straddling stocks, but pointed out that on occasion it has been necessary to take action. He urged a commitment to speedy implementation of controls to end abuses of high seas fishing rights, and stated that the Government of Canada will retain Bill C-29 until the new Agreement is fully and properly adopted.

The Chair then dealt with two procedural issues in document A/CONF.164/32. The first requested that the Secretary-General open the Agreement for signature, and the second was annexed to the Draft Final Act, and built upon articles in the Agreement which recommend that the Secretary General take action. Both of these resolutions were adopted. Nandan then requested that the Secretariat make facilities available on 4 December for the signature of the Agreement. He further noted that the Draft Final Act must now be updated to include the activities of the last two days. These actions were also adopted.

**NORWAY: Mr. Jan Henry T. Olsen, Minister of Fisheries**, stated that the Chair had demonstrated exceptional leadership and judgment and deserved the highest praise. He pointed out that the Agreement provides to the world a powerful and timely example of the will to seek reasonable compromise and peaceful settlement of the issues before them, and to allow the rule of law to prevail in their relations with each other. He urged that the achievements of today be transformed into the lasting benefits of tomorrow through early entry into force of the Agreement and reaffirmed Norway's willingness to work in partnership with their friends in the North-East Atlantic region in pursuit of this goal.

**THE EUROPEAN UNION: Fisheries Commissioner Emma Bonino** complemented the Chair on his efforts to build an instrument which has the potential to form the basis for the strong conservation requirements needed, and which seeks to obtain

solutions that are acceptable to all parties involved. She noted that the EU has not only an important high seas fishing fleet, but a substantial coastal area, and stated that it has defended the need for a regime based on strong regional organizations open to all States having a real interest in the fisheries concerned. She said that: only non-discriminatory, open regional organizations can offer States the possibility to fully discharge their obligations under international law; flag States must have exclusive jurisdiction over vessels flying their flag; and, the EU remains faithful to the mandate of the General Assembly and Article 4 of the Agreement regarding consistency with the provisions of UNCLOS. She noted that the European Community, through its competent authorities, will evaluate the Agreement in order to see whether this mandate has been achieved. She emphasized that binding legal dispute prevention and settlement must exist, and that actions by States that take the law into their own hands is unacceptable. She stated that she was profoundly astonished to find that a provision exists in the text that does not take into account concerns over the non-use of force, and expressed hope that the vague wording on this issue will be specified in the framework of regional and subregional organizations and arrangements.

**ICELAND:** The Fisheries Minister viewed the Conference as a continuation of the work begun during the Conferences on the Law of the Sea and noted that the Agreement built on successes already achieved as a result of UNCLOS. He further stated that "with the adoption of the agreement today, we find once again confirmation of the invaluable contribution the United Nations can make to the resolution of disputes between States through the evolution of international law." Iceland also thanked Conference participants for their willingness to reach compromise and thereby establish a framework for future cooperation.

**THE RUSSIAN FEDERATION:** Dr. V. F. Korelsky stated that the Agreement addresses the most acute problems facing the world's fisheries today and should resolve them in the near future. He added that provisions of the Agreement are sufficiently detailed to furnish effective solutions, providing that States continued to cooperate following the Agreement's implementation. He also underscored the importance of the provisions concerning conservation and management of SFS and HMFS on the high seas, enclaves and EEZs, as well as those related to dispute resolution.

**CHILE:** Fisheries Undersecretary Patricio A. Bernal expressed general support for the Agreement and noted that its provisions must be implemented as soon as possible. He stated that as the fourth largest fishing nation in the world, Chile has sought to establish domestic legislation to regulate most of its main fishing areas even though this requires that social and economic sacrifices be made. He stated such sacrifices were necessary for better conservation of fishery resources and urged all States to follow suit. He said that the final text continued to have some weaknesses such as the lack of a procedure for provisional implementation where no regional or subregional organizations have been established. He remarked there is a need to establish an international norm for implementation. He also called for the development of new research paradigms to better understand key aspects of fisheries management, particularly those related to States calculating the income derived from the resources.

**UNITED STATES:** Larry L. Snead noted that the Agreement carefully balances the interests of coastal States and fishing States; calls for the use of a precautionary approach to fisheries management; sets new standards for data collection and exchange; and, establishes innovative rules on boarding, inspection and enforcement. He stated that "our Agreement will bring added strength to regional fisheries organizations so that they can do a better job." He further added that the Agreement's requirement that States resort to compulsory and binding dispute resolution procedures will promote better decision-making and more peaceful settlement of disputes. The US also emphasized that effective conservation and management of SFS and HMFS throughout their

biological range is a shared responsibility and in the mutual interest of all concerned States. He closed by encouraging States to maintain the momentum established over the course of the Conference by implementing provisions of the Agreement as soon as possible.

**MEXICO:** Amb. Manuel Tello acknowledged the Agreement is a step forward in ensuring that fisheries are sustainable in the future. He stated that this is particularly due to the inclusion of the precautionary principle, the compatibility of conservation and management measures for SFS and HMFS on the high seas and in EEZs, and the recognition of regional and subregional organizations in the Agreement's implementation. His one criticism of the Agreement was that the needs of developing countries was not well reflected in the text. However, he expects that the FAO may be able to help in this regard by urging developed countries to assist developing countries to fish in areas beyond their EEZs. Mexico also underscored the importance of ensuring that Article 92 of UNCLOS, concerning the status of ships, is adhered to in the implementation of the Agreement's conservation and management measures. He added that the needs of coastal States and DWFNs must be better balanced.

**JAPAN:** Minoru Morimoto acknowledged that the Agreement will ensure the conservation and management of SFS and HMFS throughout the oceans of the world as well as improving their sustainable management. He was pleased that Japan had played a major role in advancing the development of sensible and effective measures leading to greater cooperation between States but said the negotiations had required his country to make more than its share of accommodations and compromises. He said his delegation still holds the view that "States" used in many articles should have been changed to "States Parties." Japan remains concerned about the "use of force" in Article 22(1)(f) and said it should be interpreted narrowly and that the term "jurisdiction" refers to the "jurisdiction over fisheries."

He gave notice that Japan will host the International Conference on Contribution of Fisheries to Food Security in collaboration with the FAO in Kyoto in early December. Noting the potential conflict of dates, he said he hoped that persons attending the Agreement's signing ceremony would be drawn from a different range of professional fields than those attending Kyoto. In closing he thanked Nandan for his guidance, patience and fortitude, without which the Agreement would never have materialised.

**PANAMA:** Francisco J. Berguido, in speaking about the agreed text, said his country did not wish to go against consensus, but raised his concern about Article 22 (5)(f) and the use of force because those countries with greater resources may be able to effect greater controls on the high seas. He said the Agreement should underscore the "non-use of force" as the guiding principle, which would then be fully consistent with the spirit of peaceful intervention. He reserved his government's position on Article 20(7) because there had been insufficient time for his government to respond.

**TURKEY:** Ms. Yesim Baykal said the Agreement represented a major step towards universal cooperation for the use of SFS and HMFS, but as Turkey was not a party to UNCLOS it had decided not to participate in the Agreement's adoption nor the two supporting resolutions and the Final Act. She said Turkey did not desire to block the consensus, but wished to be considered absent during the adoption process. Turkey did not wish to become a party to the Agreement at this stage, since the Agreement itself aims to implement relevant provisions of UNCLOS that Turkey has been unable to sign.

**CHINA:** The delegate from China said the Agreement represented a balanced document, accommodating the positions of all sides, but said that insufficient time had been set aside to discuss some of the principles. He said it was necessary to take into account the needs of the developing countries which have either inadequate or no fishing capability on the high seas. All countries,



he said, should conserve and manage resources on the high seas and within EEZs. China objected to the practices of a few countries who used the name of conservation and management to utilize the resources for themselves. China was against overfishing but said enforcement should be just and strict. In reference to the Province of Taiwan he noted that it enjoys abundant fishing.

**REPUBLIC OF KOREA:** **Amb. Wonil Cho** said this Agreement will make significant progress in conserving and managing SFS and HMFS throughout the entire range of their distribution and his government is fully committed to international conservation and management. He said the viable framework laid out for cooperation contains new concepts such as the precautionary approach, biological unity, compatibility, and cooperation mechanisms that have regard for the duties of and compliance and enforcement by flag States. He said his delegation believed that their requirements of clarity, transparency and legal security were secured in the Agreement, but argued that the boarding and inspection of a vessel of another State by a non-flag State on the high seas should be conducted with strict adherence to the agreed provisions and procedures. The use of force by inspectors should be carried out with utmost caution and care. His delegation had accepted the compromised version of Article 16 on an exceptional basis.

**PERU:** **Amb. Alfonso Arias-Schreiber** said the Agreement represented a significant step in the progression of international law and that his country wished to express agreement with the general consensus to adopt it.

**PHILIPPINES:** The Ambassador said the Agreement places primary jurisdiction on the flag States. The Agreement had not established a police or control regime for the high seas, but the Convention gives flag States the opportunity to control its vessels. He said the Agreement represented a delicate balance of competing interests and that his country supported its adoption.

**ARGENTINA:** **Amb. Alberto Daverede** said his country had warned of the potentially serious problem of overfishing on the high seas during the UNCLOS negotiations. He said the text is not a victory of one group of States over another but it instills cooperation between States. It had been constructed on the solid foundation of UNCLOS which Argentina intends to ratify shortly. He said the South West Atlantic bank is one of the richest fishing areas of the world and his country would not like to see it exhausted. He preferred quick implementation of international norms before the Agreement enters into force as this would provide for cooperation at the regional and subregional level.

**ESTONIA:** The delegate representing Estonia's Minister for Environment and Fish said the document is complete and well balanced and that he especially welcomed the new environmental concepts such as the precautionary approach. The text represented a giant step towards improved international cooperation.

**COLOMBIA:** The delegate from Colombia said that the consensus reached has given a "great" tool for the conservation and management of SFS and HMFS around the world. It is of great importance to the international community on the eve of the 21st Century, and ensures that fishing will be managed for future generations.

**AUSTRALIA:** **Rep. Mary Harwood**, speaking on behalf of the member countries of the South Pacific Forum Fisheries Agency, stated that the new Agreement contains elements of fundamental importance to her region, including provisions giving meaning to the application of the precautionary approach. The key goal of greater commitment to flag State control has been achieved and is complemented by a scheme for cooperative enforcement action.

**POLAND:** **Amb. Stanislaw Pawlak** stated that in the interest of its fishermen, Poland had been hesitant to accept a binding agreement. He noted that the Agreement was adopted without a vote and does not fully respect the views of all States. Article 16

produced a drawn out debate, but this Article was not an urgent necessity. He stated that Poland understands that the compromise text is within the framework of UNCLOS, but expressed concern with the last sentence of Article 16 concerning provisional arrangements.

**NAMIBIA:** **Dr. Burger W. Oelofsen** stated that Namibia is one of the few countries that has the principle of sustainable utilization of natural resources enshrined in its Constitution, and Namibia applauds the adoption of this Agreement. It has set the global fishing family on the road toward achieving the goal of real sustainable utilization, but adoption is not the end of the road. Success will require goodwill, political commitment and concerted efforts.

**URUGUAY:** **Amb. Julio Cesar Lupinacci** stated that the Agreement responds to the Conference mandate and established principles which will help ensure the long term conservation of fisheries. It defines the scope and describes the form of cooperation which UNCLOS requires. Subregional and regional management entities must work with transparency and take into the account the right of all States. He said that Uruguay has participated at all stages and is very satisfied with the results.

**SYRIA:** The delegate from Syria stated that he did not want to go against the general consensus, but said the time allotted for negotiation was not sufficient. He emphasized that Syria's position will be determined later, following an in-depth study of the draft by experts within his country.

**PAPUA NEW GUINEA:** **Amb. Utula U. Samana** stated that Papua New Guinea looks forward to signing this Agreement and will do its best to get the necessary processes done for early ratification and effective implementation. He said the Agreement underscores the level of cooperation needed and the areas where cooperation should be directed, and urged that goodwill and commitment will facilitate the full involvement of developing countries.

**FAO:** **Dr. Wolfgang Krone** assured the Conference that the FAO will do its utmost to help implement the Agreement and to coordinate its implementation alongside other fisheries arrangements, such as the Code of Conduct. The FAO has already begun development of a draft regional programme and will look closely at regional fishery management bodies. He expressed confidence that FAO would receive support from its membership.

**WORLD WIDE FUND FOR NATURE (WWF):** **Ms. Indrani Lutchman** expressed hope that this Conference has shown delegates the kind of contributions that NGOs can make to negotiations dealing with fisheries. NGOs have provided constructive criticisms, contributed new ideas and raised public awareness, which in turn has generated the political will necessary to begin changing global fisheries management. WWF sees the willingness of regional bodies to open their secretive deliberations as the first test of this Agreement's strength.

**GREENPEACE:** **Ms. Helene Bours** expressed disappointment that the Agreement is not stronger. Greenpeace has serious concerns over the qualifications to application of the conservation measures, and believes that governments have failed on the issue of selective fishing. Nevertheless, the seeds of hope for future action are contained in this treaty, particularly the precautionary approach and data sharing requirements.

**INTERNATIONAL COLLECTIVE IN SUPPORT OF FISHWORKERS (ICSF):** **Mr. Sebastian Mathew** said that ICSF is glad to see the reference to the interests of artisanal and subsistence fishers, and the need to avoid adverse impacts on artisanal and small-scale fishworkers. He thanked the delegations of Peru, Venezuela and Brazil for support, and added that he would like to see language in the final text on improving the work conditions on board distant water fishing vessels.

## A BRIEF ANALYSIS OF THE CONFERENCE

The fisheries highway navigated by delegates over the last three years has been a turbulent one, often rocked by coastal State ambitions to promote "creeping jurisdiction" over the resources of the high seas. Many of the arguments, for and against this move were rehearsed much as they were during the UNCLOS negotiations which created the EEZ regime. A number of actors negotiating at the Conference were veterans of the UNCLOS era, but their egos were often stymied by objective "young turks" who, perhaps conscious of the wider environmental agenda, were better able to appreciate the range of linked environmental issues. It was not surprising therefore to see issues of transparency, the rights of fishers, the precautionary approach and obligatory data collection constituted as new principles of high seas fisheries conservation and management.

**THE COASTAL STATE-FLAG STATE DIVIDE:** From beginning to end the Conference, negotiations were conducted between these two groups. The DWFNs consisting of the EU, China, Japan, Korea and Poland, were ranged against "the rest" who were led by the like-minded core group consisting of Argentina, Canada, Chile, Iceland, New Zealand, Norway and Peru, later joined by Indonesia. The coastal State caucus sought to secure enhanced coastal State jurisdiction over the resources of the high seas, while the DWFNs fought against any such "creeping jurisdiction" by the coastal States. Even up until the eleventh hour of negotiations, the Latin Americans wanted such enhanced jurisdiction. In each of the principle caucus groups certain divisions existed, and the only caucus group with a unified voice was the South Pacific Forum Fisheries Agency.

**THE PIVOTAL ROLE OF THE CHAIR:** Identifying the "Friends of the Chair" was never an easy task. Perhaps all was revealed in the Chair's closing statement when Satya Nandan expressly thanked four of his colleagues from the Pacific region — representatives from the Australia, the FFA, Fiji and New Zealand — whose assistance he said had been "unstinting and selfless." The role of the Chair was never an easy one. The return of Iceland's skillful Amb. Gudmundur Eiriksson to the Conference appeared to assist the Chair in some of the more difficult informal consultations. The Chair, as a veteran of the UNCLOS, had a special relationship with many of the delegates present, but his entrepreneurial style, embodying pragmatism and an unselfish desire to steer the Conference through uncharted waters did much to warm delegates to his personal style of negotiation. Nandan's own special contribution was warmly applauded by individual delegates and Conference as a whole at the sessions conclusion.

### CONSERVATION AND MANAGEMENT GAINS

**THE PRECAUTIONARY APPROACH TO FISHERIES MANAGEMENT:** One of the essential new elements in high seas fisheries management is the acceptance of the "precautionary approach" concept. The FAO was mandated by the first substantive session to produce a document that could serve as a discussion document for delegates. The FAO document, A/CONF.164/INF/8, outlined the confusion between the Precautionary Approach and the Precautionary Principle that had dogged earlier discussion. Debate sometimes referred to the Precautionary Approach as a "mixed bag of options." DWFNs were concerned that the concept would be adopted by coastal States as an open licence to adopt "moratoria" as a new management norm. The Precautionary Approach requires that scientific uncertainty be taken into consideration when deciding upon catch levels, especially when developing new or exploratory fisheries. It represents a major step forward from an environmental perspective, particularly because the absence of adequate scientific information shall not be used as a reason for postponing or failing to take effective conservation and management measures. The Agreement requires that States apply a

seven-point guideline for the application of the Precautionary Approach, but the Agreement still maintains reference back to the MSY concept, which some delegates eloquently argued has long passed its "sell-by-date."

**OBLIGATORY DATA COLLECTION:** Who really knows what the true catch is on the high seas? Depending on whose views are last listened to, then the picture of high seas fishing catches could vary as much as the climatic conditions of New York. The Agreement obligates States to collect and share data on SFS and HMFS. This obligation represents not only a beneficial step forward in high seas fisheries management, but also in international law. The absence of composite data collection from high seas fishing practices has been a fundamental flaw in fisheries management. The collection of good and reliable data is essential to good fisheries management. The dissemination of fisheries data to the regional organizations and other interested parties represents a major step forward that can only enhance the work of the international fisheries scientific community. However, it remains to be seen if political decision-making will continue to overrule the sound advice of fisheries managers, as has so frequently and sadly happened in the past.

**RIGHT TO BOARD AND INSPECT:** Fundamental to high seas fisheries management and conservation measures is a requirement to board and inspect any fishing vessel that may be in contravention of the subregional or regional organization or arrangement. In the beginning, coastal States desired the right to board, detain and "arrest." These procedures have now been watered down to "board and inspect" and further investigate if necessary. This new rule does not remove flag State control over the vessel, but requires the flag State to take responsive and meaningful action after an inspection has revealed a contravention of the rules. Flag States, especially Japan, are concerned that the "use of force" defined in regard to boarding and inspection procedures should be used in the "narrow" sense and not broadly. The Agreement has struck consensus and it would be extremely disheartening to see an emergence of "gunboat diplomacy" under this provision.

**NGO IMPACT:** At the beginning, unnecessary and unhelpful comments were registered by delegates regarding the anticipated level of NGO participation. Delegates feared that the Conference would be dogged with similar numbers of NGOs as had attended the Earth Summit. Some delegates had no desire to accommodate any form of NGO involvement, while others recognised the input value that NGOs could contribute to the scientific and social aspects of the debate. The Rules of Procedure adopted provided for the Chair to invite NGO participation with the agreement of the Conference. This initially was an uneasy process and during the early informal consultations NGOs were barred from attending. An informal agreement struck with the Chair, later provided for very limited NGO admission. NGOs were able to strike alliances with some delegations that secured additional or modified provision of the text. During the earlier sessions NGOs maintained an active agenda, often working with a common sense of purpose and direction, but as the Conference work became extended by twelve months, financial and other constraints impinged upon the potential to feed constructive criticism into the negotiation process. NGOs had limited opportunity in the final session to tender new comments, because the session was effectively devoted to harmonising text. NGO representatives in their closing statements afforded the Chair and delegations complimentary remarks, but reminded the Conference that the Agreement represented a "first step" in further development of the global fisheries regime.

### FAILINGS AND SET-BACKS

**LACK OF GLOBAL OCEAN LINKAGES:** The Agreement has created a new conservation and management framework for high seas resources and its rules apply only to straddling and highly migratory fish stocks, throughout their entire biological unity.

Fishing for SFS and HMFS constitutes a small percentage of the global marine fish catch. But a question mark hangs over the "actual" percentage. NGOs maintain that the Agreement will act as a "good first step" to beginning to solve the problems related to global fisheries, but the need remains for a holistic, all encompassing global regime as science continues to prove the interdependence of all species within individual ecosystems and the global oceanic system as a whole. The Conference failed to address, in any meaningful form, matters of environmental liability and compensation where damage to the marine environment is proven. Rules and regulations are needed to prevent and limit environmental damage resulting from harmful fishing operations.

**FAILURE TO ADDRESS THE USE OF SELECTIVE FISHING GEAR:** The issue of a requirement to use "selective fishing gear" became an NGO focal point at the beginning of the Conference. By-catch, waste and discards are all connected to this key issue. The obligation to use selective fishing gear and techniques "only to the extent practicable" will do little to solve one of the most pressing problems in fishing today. NGOs have especially charged that there are "extraordinarily high levels of bycatch, waste and discards" throughout the global fishing industry. Various figures suggest this could be more than 20 million tonnes. If this figure is "real" and there is some FAO confirmation of this amount, then the Agreement has substantially failed to link the need for improved conservation and management practices with the "global fish-food security" concept as well as failing to recognise that non-selective fishing gear not only supports overfishing, but results in social conflict between different gear groups. The FAO Code of Conduct will address by-catch, waste and discards, but the Code is for voluntary "adoption."

**FURTHERING THE RIGHTS AND WELFARE OF FISHING CREWS:** Absent in the earlier versions of the Chair's text from which the Agreement was born, was particular reference to the rights of fishers and fishworkers. Sustained lobbying by the International Collective in Support of Fishworkers, substantially developed the Chair's text requiring States fishing on the high seas to "take into account the interests of artisanal and subsistence fishers." The Agreement lacks linkages back to the working conditions on board distant water fishing vessels, especially as conservation measures can be better implemented with the collaboration of fishworkers. ICSF insistency to take into account the interests of fishers, was supported by Brazil, Peru and Venezuela. However, a group of fishworker union leaders from Argentina, Chile, Ecuador and Peru referred to their members as "slaves of the end of the 20th century, without agreements or guarantees of international minimum standards for working hours, rest, repatriation and social security." This is indicative that much needs to be done so that commercial fishing activities help facilitate the achievement of sustainable development.

**THE POTENTIAL FOR NON-ACCEPTANCE OF TRANSPARENCY IN DECISION-MAKING:** Membership of the subregional and regional organizations is a like a "select club." The right of entry to "the club" by other interested States remained a bone of contention throughout the negotiation process. Transparency in decision-making can only come about through public scrutiny of the decision-making process. Access to such organizations typically carries a heavy "financial" fee. NGOs acting as public watchdogs will, for the most part, be unable to raise the necessary funds to gain access, even if political will exists in the subregional or regional organization to open up its "secretive deliberations" to external scrutiny. A crucial element of the well-functioning of such bodies is active NGO participation.

### CRITICAL NEXT STEPS

**PROMPT RATIFICATION:** Unlike UNCLOS, the Agreement should secure prompt ratification. Coastal States expressed varying proposals as to the appropriate number of instruments of ratification needed for the Agreement to being the

process of entry into force. Australia said it could accept a number less than twenty. This would have had some immediate impact in the South Pacific region, because the FFA member States have always stated their preference for a globally binding agreement. Argentina, perhaps one of the more rational Latin American coastal States, indicated that 20 ratifications would be appropriate, while others championed higher numbers. An unusual comment by the US suggested that perhaps 22 might be a sensible number because it has some historical connection to the early development of the high seas fisheries regime. Agreement was struck on 30 ratifications. Prompt ratification is possible especially if one accepts that the coastal States will continue to realize their goal of reducing high seas fishing activities on SFS and HMFS. However, it remains to be seen just how quickly the DWFNs will ratify.

**ENTRY INTO FORCE:** Thirty days after the 30th instrument of ratification has been deposited the Agreement enters into force. This date could be in early 1996 especially if coastal States remain serious about the legally binding nature of the Agreement. Even assuming such an early entry into force, the bureaucratic structures of subregional and regional organizations will likely substantially delay the Agreement's early effectiveness. Consequently it remains to be seen just how quickly perceived high seas overfishing is reduced, and how quantifiable this will be in the short term.

**REVIEW CONFERENCE:** The Agreement provides for a review conference four years after the date of entry into force of the Agreement. This will cause for some early assessment of the effectiveness of the Agreement, but four years might be too soon to determine the qualitative adequacy of the Agreement. Should States decide that evidence collected four years after entry into force be insufficient to effectively gauge incremental change in high seas fishing practices, NGOs will contend that governments commitment to high seas fisheries conservation and management lacks seriousness.

### THINGS TO LOOK FOR

**SIGNING CEREMONY:** The Agreement will be opened for signature at UN Headquarters in New York on 4 December 1995. The Agreement will also be opened for ratification at that time.

**50TH SESSION OF THE UN GENERAL ASSEMBLY:** The General Assembly agenda will review a number of fisheries related issues. These include: unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas; fisheries bycatch and discards and their impact on the sustainable use of the world's living marine resources and a sub-item dealing with sustainable use and conservation and conservation of the marine living resources of the high seas.

**FOOD AND AGRICULTURE ORGANIZATION:** The Technical Committee is to meet in Rome from 25-29 September 1995 to finalize the eleven articles contained in the draft Code of Conduct. A final text will then be produced for a meeting of the Council on Fisheries in late October. Thereafter, the Code will be presented for adoption at the FAO Conference on 25 October 1995.

**INTERNATIONAL CONFERENCE ON CONTRIBUTION OF FISHERIES TO FOOD SECURITY:** Japan, in collaboration with the FAO will host the International Conference on Contribution of Fisheries to Food Security in Kyoto from 4-9 December 1995. This conference is expected to attract a wide range of governmental and non-governmental representatives with genuine interests in fisheries.

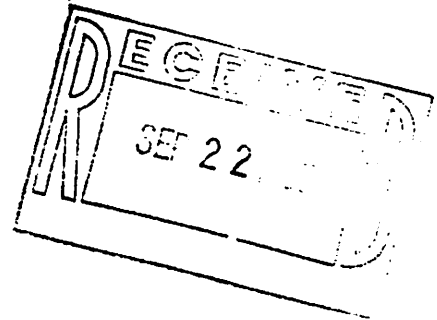
**NGO ACTIVITIES:** NGOs will continue to seek enhanced rights of access to the decision-making procedures of subregional and regional organizations. NGOs will continue to maintain a concerted drive to ensure the best possible rights for NGOs, including fishworkers organizations, and that the rules governing the fishing industry should be applied to all fish stocks wherever they are fished.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1335 East-West Highway  
Silver Spring, MD 20910  
THE DIRECTOR

AGENDA B-1  
SEPTEMBER 1995  
SUPPLEMENTAL

SEP 15 1995



Mr. Clarence G. Pautzke  
Executive Director  
North Pacific Council  
P.O. Box 103136  
Anchorage, Alaska 99510

Dear Mr. Pautzke:

I have written to the Councils several times in the past to inform their members of the status of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. I am happy to report that the session that concluded on August 4 adopted by consensus the enclosed Agreement, which will be opened for signature in December and which will come into force upon the thirtieth ratification. Joining the consensus were the United States, 109 other members of the United Nations, and the European Community. We all appreciate very much the service of Kitty Simonds and Lee Anderson on the U.S. delegation.

We have again prepared a summary and analysis which is enclosed along with the Agreement itself for your information and use. We would be pleased to offer the Council a briefing on the Agreement at your convenience. If you would like to arrange for one, please contact Dean Swanson at 301-713-2276 (by fax 2313).

Sincerely,

*Gary Matlock*

for Rolland A. Schmitt

Enclosures

THE ASSISTANT ADMINISTRATOR  
FOR FISHERIES



September 15, 1995

The United Nations (UN) Conference  
on Straddling Fish Stocks and  
Highly Migratory Fish Stocks (Conference)

The purpose of this paper is to characterize the context of the Conference negotiating process, describe the resulting Agreement (attached), and provide a brief analysis of the implications of the text for the Magnuson Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, U.S. domestic fisheries management, and international fisheries management arrangements to which the United States is party.

Negotiating Process

The Conference is an outcome of the UN Conference on Environment and Development and was called for by resolution of the UN General Assembly. It concluded its sixth and final session in New York on August 4. General concern with overfishing generally, particularly on the high seas, and concerns over specific fisheries for straddling or highly migratory stocks gave rise to the negotiations. (The Agreement does not define either term, but the usage of "highly migratory fish stocks" is compatible with the Magnuson Act's definition, and "straddling stocks" is understood to mean those stocks that appear within an exclusive economic zone and in an adjacent high seas area.)

The original enabling resolution (UNGA 47/192) states that the Conference, drawing on scientific and technical studies by the UN Food and Agriculture Organization, should: identify and assess existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks, consider means of improving fisheries cooperation among States, and formulate appropriate recommendations.

The Agreement

-CONSERVATION-

The Agreement promotes the effective conservation and management of important fishery resources, and it strikes a reasonable balance between the interests of coastal States and distant water fishing States. We fully support the Agreement's objective of sustainable use of straddling and highly migratory fish stocks throughout their ranges through strong conservation measures.

Among its most noteworthy features, the Agreement calls for the application of the precautionary approach to fisheries management throughout the ranges of the stocks. It contains a strong Annex on data collection and sharing, and it provides for compulsory, binding dispute settlement in accordance with the UN Convention on the Law of the Sea (UNCLOS). The Agreement provides for port-State enforcement and establishes an important new principle by permitting under appropriate circumstances non-flag States to board and inspect fishing vessels on the high seas to ensure compliance with regionally agreed conservation measures.

This historic Agreement aims to reverse the global trend of declining fish stocks. It preserves current UNCLOS-based conservation and management concepts. At the same time, it gives form and substance to the UNCLOS mandate for States to cooperate in conserving and managing straddling and highly migratory fish stocks. Coastal States and States fishing on the high seas are to cooperate either directly or through appropriate subregional or regional fisheries management organizations or arrangements to ensure effective conservation and management of the stocks. Where there is no such organization or arrangement, the relevant coastal States and States fishing on the high seas are to cooperate to establish one, or enter into other appropriate arrangements, and are to participate in the work of the organization or arrangement.

The Agreement also calls for compatibility of conservation and management measures between those on the high seas and those within areas of national jurisdiction. Piecemeal conservation efforts based on disparate management regimes in multiple areas of national jurisdiction make no sense. The Agreement encourages relevant coastal and fishing States to cooperate to ensure the conservation and management of such stocks in their entirety, both within and beyond areas of national jurisdiction.

#### -ENFORCEMENT-

The compliance and enforcement provisions of the Agreement are among the most innovative. The Agreement reaffirms the right and responsibility of coastal states to ensure compliance with fishery rules applicable within their areas of national jurisdiction. Enforcement on the high seas is a very sensitive matter; this issue was among the last to be resolved in the negotiations. For centuries, the law of the sea provided, with few exceptions, that a State could only take enforcement action on the high seas against vessels entitled to fly its flag. The Agreement will establish some new precedents in this area. It allows non-flag States to board and inspect vessels fishing on the high seas to ensure compliance with conservation and management measures established by subregional or regional fisheries management organizations or arrangements.

Further enforcement action, including ordering a fishing vessel to port, may be taken in the case of "serious" violations by vessels whose flag State either cannot or will not exercise proper control over them. Serious violations under the Agreement include fishing without a license; failing to maintain accurate records; fishing in a closed area or for stocks subject to a moratorium; using prohibited gear; falsifying markings or other identification; concealing, tampering with, or disposing of evidence; and multiple violations which together constitute a serious disregard for conservation and management measures.

The Agreement provides that States act through subregional or regional fisheries management organizations or arrangements to establish procedures for boarding and inspection and to implement the other provisions involving enforcement. If they have not done so within two years after adoption of the Agreement, or have not established an alternative enforcement mechanism, then boardings and inspections can occur following "default" rules detailed in the Agreement.

#### -DISPUTE SETTLEMENT-

Finally, after conservation and enforcement, the third pillar of the Agreement is dispute settlement. Parties to the new Agreement are bound to settle disputes over any matter relating to the Agreement or to the agreements underlying subregional or regional fisheries management organizations or arrangements using the binding, compulsory dispute settlement procedures provided in UNCLOS.

Index to the Agreement (A/CONF.164/33, dated 3 August 1995)

The text contains a preamble, 50 articles in 11 parts, and two annexes.

The brief preamble focuses on the need to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through cooperation between coastal States and States fishing on the high seas.

Part I, general provisions, sets forth definitions of key terms used, the objective, application to the high seas and areas of national jurisdiction, and nonprejudice to the provisions of the UN Convention on the Law of the Sea (UNCLOS). Although the Agreement has received some criticism as only applying to the high seas, in fact important provisions concerning general principles, the precautionary approach, and compatibility apply within areas of national jurisdiction as well.

Part II, conservation and management, obligates coastal States and States fishing on the high seas to cooperate in accordance with UNCLOS and to apply the precautionary approach to



fisheries management to ensure long-term sustainability of stocks. Conservation and management measures for non-target species are also required. States are required to minimize pollution and waste through measures including, to the extent practicable, selective fishing gear and techniques. Compatibility of conservation and management measures within and beyond areas of national jurisdiction is required.

Part III, mechanisms for international cooperation, deals with cooperation for conservation and management, subregional or regional fisheries management organizations or arrangements and their functions, and cooperation to strengthen existing organizations or arrangements. It also addresses collection and sharing of data and enclosed and semi-enclosed seas.

Part IV, non-members and non-participants, addresses the problems of fishing by vessels whose flag States are not members of subregional or regional conservation and management regimes. In order for such vessels to continue to fish, their flag States must either become a member of or party to the relevant regimes or otherwise agree to abide by them.

Part V, duties of the flag State, sets forth duties and requirements to ensure that vessels of the flag State comply with subregional and regional conservation and management measures.

Part VI, compliance and enforcement, deals with flag State enforcement, international cooperation in enforcement, and regional arrangements for enforcement, as well as rights and duties of port States.

Part VII, requirements of developing States, deals with measures to assist developing States in carrying out their rights and duties for the conservation and management of straddling and highly migratory fish stocks.

Part VIII, peaceful settlement of disputes, relies on the dispute settlement provisions of UNCLOS.

Part IX, non-parties to this Agreement, requires parties to encourage non-parties to accede to the Agreement.

Part X, good faith and abuse of rights, requires States to fulfill in good faith the obligations set forth in the text in a manner consistent with UNCLOS.

Part XI, responsibility and liability, makes States Parties liable in accordance with international law for damage or loss attributable to them.



Part XII, review conference, deals with a conference which is to meet four years after the Agreement comes into force to review implementation.

Part XIII, final provisions, specifies that the text will enter into force 30 days after the thirtieth ratification and sets forth other provisions.

There are two annexes, dealing with standard requirements for collection and sharing of data, and guidelines for the application of precautionary reference points, respectively.

### Implications of the Text

The National Marine Fisheries Service (NMFS) believes that the attached Agreement is consistent with the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act. With respect to the application of the precautionary approach within areas of national jurisdiction, such as the exclusive economic zone, the Magnuson Act does not mandate fisheries conservation and management actions that recognize scientific uncertainties and data gaps to the degree the Chairman's text would require. But such actions would not be inconsistent with that Act either. In fact, the adoption by the Regional Fishery Management Councils and NMFS of risk-averse decision making in fisheries conservation and management is an application of the precautionary approach. We also see no inconsistencies between the Act and the provisions of the Agreement dealing with conservation and management, including bycatch, enforcement, and data collection.

We note that the U.S. delegation to these negotiations consistently worked to avoid any inconsistencies between U.S. statutes and the succession of negotiating texts. NMFS anticipates that some provisions of the Agreement, such as those related to the precautionary approach, may imply changes of interpretation as well as practice in domestic fisheries management, but these changes are already occurring for the same reasons the Conference reached consensus on a conservative orientation.

Finally, the question arises as to the implications of the Agreement for existing international fisheries management arrangements. Clearly, where international management arrangements do not exist for high seas straddling stock or highly migratory fisheries, States are encouraged to create them in carrying out their duties to cooperate. States whose vessels fish in areas where they are not party to existing arrangements are required to become party to or agree to apply such arrangements or to cease fishing in the area in question. Resource allocation questions will continue to be difficult due to the text's imperative (Article 8, paragraph 3) that States

whose vessels fish for pertinent stocks in an area managed under existing international arrangements should become party to or agree to apply such arrangements to their vessels under the applicable rules of those arrangements. Once party to the arrangements, such States might expect to participate in resource allocations, as set forth in Article 11. However, the Agreement does not require that such "new members" receive any particular allocation; this is left for negotiation on a regional basis.

Specific U.S. interests in the stocks under consideration include tuna and other non-cetacean highly migratory fish stocks and pollock in the central Bering Sea. Subregional or regional fisheries management organizations or arrangements exist or are pending in most areas U.S. fishermen fish for these species, in particular: in the eastern Pacific Ocean with the Inter-American Tropical Tuna Commission; in the Atlantic Ocean with the International Commission for the Conservation of Atlantic Tunas; and in the central Bering Sea with the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, the latter of which we hope will enter into force in the near future. NMFS does not see inconsistencies between these international fisheries agreements and the Agreement. We look forward to being instrumental in implementing the principles found in the new Agreement into the regimes established by these agreements.

**NPFMC COMMITTEES AND WORKGROUPS**

Committee/Workgroup	Council	SSC	AP	Others**														
Advisory Panel Nominating	Mace* Council Committee of the Whole																	
Council/Board of Fish Consultation Committee	<table border="0"> <tr> <td><b>Council:</b></td> <td><b>Board:</b></td> </tr> <tr> <td>Hegge</td> <td>Bower</td> </tr> <tr> <td>Lauber</td> <td>Edfelt</td> </tr> <tr> <td>Barker</td> <td>Engel</td> </tr> <tr> <td>Pennoyer</td> <td>Jacobsen</td> </tr> <tr> <td>ADFG Comm.</td> <td></td> </tr> <tr> <td>Samuelsen</td> <td></td> </tr> </table>	<b>Council:</b>	<b>Board:</b>	Hegge	Bower	Lauber	Edfelt	Barker	Engel	Pennoyer	Jacobsen	ADFG Comm.		Samuelsen				
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Lauber	Edfelt																	
Barker	Engel																	
Pennoyer	Jacobsen																	
ADFG Comm.																		
Samuelsen																		
Crab Interim Action Committee	Barker Pennoyer Rosier																	
Discards Committee	Hegge Lauber Pereyra																	
Enforcement Committee	Anderson Hegge*			L.Lindeman, GCAK W.Karp, AFSC S.Meyer, NMFS-Enf. USFW Representative S.Salveson, NMFS-AKR C.Seibel, AFWP														
Finance	Hanson Lauber* Pennoyer																	
Habitat	Hanson Pereyra NOAA Fisheries Rep USCG Rep USFW Rep																	

\*Denotes Chairman  
Agency staff will attend meetings as necessary.

**NPFMC COMMITTEES AND WORKGROUPS**

Committee/Workgroup	Council	SSC	AP	Others**
Halibut Charter Workgroup				J.Bruce W.Carpenter T.Evers/E.Dersham D.Falvey B.Bingham/B.Foster S.Gross* G.McIntosh/D. Ogden D.McQueen K.Parker D.Shreve E.Stirrup R.Ward
IFQ Implementation Workgroup (Industry)				J.Bruce D.Iverson J.Knudsen L.Kozak K.Norosz* J.Phillips P.Pletnikoff D.Scalzi J.Stephan H.Thompson J.Woodruff
Council Interim Action Committee	Poll all Council Members			
Law of the Sea Committee	Dave Benson Dave Benton Dave Fluharty Dave Hanson* Greg McIntosh Harold Sparck			

\*Denotes Chairman  
 Agency staff attend meetings as necessary.

**NPFMC COMMITTEES AND WORKGROUPS**

Committee/Workgroup	Council	SSC	AP	Others**
Observer Oversight Committee				D.Benson B. Bigler C.Blackburn* S.Davis J.Hill M.Merklein N.Munro J.Nelson B.Samuelson A.Thomson G. Westman J.Winther
Pacific Northwest Crab Industry Advisory Committee				A.Aadland D.Benson B.Eaton D.Giles B.Joyce G.Loncon* R.Miller A.Thomson R.White

\*Denotes Chairman  
 Agency staff will attend meetings as necessary.

### FISHERY MANAGEMENT PLAN TEAMS

PLAN	PLAN TEAM MEMBERS	PLAN	PLAN TEAM MEMBERS
<b>GOA Groundfish</b>	Barry Bracken (ADFG) Kaja Brix (NMFS-AKR) Jane DiCosimo (NPFMC) Richard Ferrero (NMML) Jeffrey Fujioka (AFSC) Lew Haldorsen (UAS) Jim Hastie (AFSC) Jon Heifitz (ABL) Jim Ianelli (AFSC) Sandra Lowe* (AFSC) Gregg Williams (IPHC) Vacant (WDF)	<b>Crab</b>	Ken Griffin (ADFG-Juneau) Rance Morrison (ADFG-D.Harbor) Peggy Murphy (ADFG-Juneau) Bill Nippes (ADFG-Kodiak) Bot Otto (AFSC-Kodiak) Jerry Reeves (AFSC) Kim Rivera (NMFS-AKR) Tom Shirley (UAS) Dave Witherell (NPFMC)
<b>BSAI Groundfish</b>	Dave Ackley (ADFG) Dave Colpo (AFSC) Loh-lee Low* (AFSC) Dick Merrick (NMML) Grant Thompson (AFSC) Ellen Varosi (NMFS-AKR) Gregg Williams (IPHC) Dave Witherell (NPFMC) Vacant (WDF) Vacant (UAS)	<b>Troll Salmon</b>	Aven Anderson* (NMFS-AKR) Jim Berkson (CRITFC) Jane DiCosimo (NPFMC) Dave Gaudet (ADFG) Paul Larson (ADFG) Alex Wertheimer (AFSC) Ron Williams (ODFW)
<b>Halibut Management Team</b>	Jay Ginter (NMFS) Jane DiCosimo (NPFMC) Earl Krygier (ADFG) Grant Thompson (AFSC) Bob Trumble (IPHC)	<b>Scallops</b>	Jane DiCosimo (NPFMC) Jay Ginter (NMFS-AKR) Ken Griffin (ADFG) Dave Ham (NMFS-AKR) Gordon Kruse (ADFG) Loh-lee Low (AFSC) Kim Rivera (NMFS-AKR) Susan Shirley (CFEC) Dave Witherell (NPFMC)

\*Denotes Chairman  
 Agency sta ) attend meetings as necessary.