

## **The 1995 United Nations Fish Stocks Agreement**

### **Background**

The 1982 United Nations Convention on the Law of the Sea (the “Convention”) sets out the overarching legal regime for the conservation and management of marine living resources within areas under national jurisdiction and on the high seas. It also contains specific provisions relating to straddling fish stocks and highly migratory fish stocks.<sup>1</sup> In light of ongoing problems regarding the conservation and management of these stocks, Agenda 21 of the 1992 United Nations Conference on Environment and Development (UNCED) called for the convening of an intergovernmental conference under United Nations auspices to promote effective implementation of these provisions.<sup>2</sup>

Pursuant to resolution 47/192 of the General Assembly,<sup>3</sup> the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened in 1993. It completed its work in 1995 with the adoption of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the “Agreement”).

The Agreement entered into force on 21 December 2001 and currently has 80 States Parties, including the European Union. It is considered to be the most important legally binding global instrument to be adopted for the conservation and management of fishery resources since the adoption of the Convention in 1982. Participation in the Agreement is thus regarded as an important way for a country to signal that it is a responsible fishing nation.

### **The Agreement**

The Agreement sets out the legal regime for the conservation and management of straddling and highly migratory fish stocks, with a view to ensuring their long-term conservation and sustainable use. Highly migratory fish stocks, such as tuna, swordfish and oceanic sharks, regularly travel long distances through both high seas areas and areas under national jurisdiction. Straddling stocks, such as cod, halibut, pollock, jack mackerel and squid, occur both within a country’s exclusive economic zone and in the adjacent high sea area. Pursuant to the Agreement, the conservation and management of such stocks must be based on the precautionary approach and the best scientific evidence available.

The Agreement also elaborates on the fundamental principle established in the Convention that States should cooperate in taking the measures necessary for the conservation of these resources. Under the Agreement, regional fisheries management

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<sup>1</sup> See UNCLOS articles 63(2) and 64.

<sup>2</sup> See Agenda 21 paragraph 17.50.

<sup>3</sup> See resolution 47/192, United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted on 22 December 1992.

organizations and arrangements (RFMOs/As) are the primary vehicle for cooperation between coastal States and high seas fishing States in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The Agreement also incorporated new principles, norms and rules that constitute a progressive development of the relevant provisions of the Convention and are aimed at addressing new challenges affecting high seas fisheries. Conservation and management measures that are adopted for areas under national jurisdiction and established in the high seas are required to be compatible. In addition, mechanisms are provided for the compliance and enforcement of measures on the high seas. The Agreement also recognizes the special requirements of developing States, including in the development of their own fisheries and in their participation in high seas fisheries for straddling and highly migratory fish stocks.

### **Meetings held pursuant to the Agreement**

*Review Conference.* In 2006, in accordance with Article 36 of the Agreement, a Review Conference was convened to assess the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and proposing means of strengthening the substance and methods of implementation of those provisions in order to better address any continuing problems in the conservation and management of these stocks.

The Review Conference addressed ways to give full effect to the Agreement, both through a substantive review and assessment and by agreeing on recommendations for strengthening the implementation of the Agreement. Recommendations were adopted relating to the conservation and management of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance and compliance and enforcement; and developing States and non-parties.<sup>4</sup> In regards to the latter, the Conference recommended that States exchange ideas on ways to promote further ratification and accession to the Agreement through a continuing dialogue to address concerns raised by some non-parties.

In 2010, the resumed Review Conference conducted a review of the implementation of the recommendations adopted at the Review Conference in 2006 and adopted additional recommendations.<sup>5</sup> The Conference also recommended that the Informal Consultations of States Parties to the Agreement continue (see below) and that the Agreement be kept under review through the resumption of the Review Conference at a date not earlier than 2015.<sup>6</sup> In its resolution 65/38, the General Assembly encouraged accelerated progress by States and RFMO/As regarding the recommendations adopted by the Review Conference

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<sup>4</sup> A/CONF.210/2006/15, Annex. See also A/61/63/Add.1, at paras. 151-160.

<sup>5</sup> A/CONF.210/2010/7, Annex.

<sup>6</sup> A/65/69/Add.2, paragraphs 10-11.

in 2006 and also encouraged States and RFMO/As to consider implementing the recommendations adopted by the resumed Review Conference in 2010.<sup>7</sup>

*Informal Consultations of States Parties to the Agreement.* Pursuant to requests of the General Assembly, the first nine rounds of the Informal Consultations of States Parties to the Agreement were held on an annual basis between 2002 and 2010. The meetings provided States with a forum to discuss issues relating to the implementation of the Agreement and to take preparatory steps for the Review Conference and the resumed Review Conference. Pursuant to paragraph 39 of General Assembly resolution 67/79 of 11 December 2012, the tenth round of Informal Consultations will be convened in 2014.

The Informal Consultations have also contributed to the consideration by the General Assembly of its agenda item on oceans and the law of the sea. Specific outcomes of the meetings of the Informal Consultations have included: recommendations on the establishment of the Assistance Fund under Part VII of the Agreement; development and adoption of terms of reference for the Assistance Fund; consideration and adoption of preparatory documents for the Review Conference in 2006 and the resumed Review Conference in 2010; and a continuing dialogue, in particular with developing States, to promote a wider participation in the Agreement.

### **Impact of the Agreement**

The Agreement marked a major step forward in the development of a comprehensive legal regime for the long-term conservation and sustainable use of straddling and highly migratory fish stocks. In particular, the Agreement has contributed to the conservation and management of the world's fisheries for these stocks by:

- Strengthening the role of regional fisheries management organizations and arrangements;
- Ensuring effective mechanisms for compliance and enforcement of international conservation and management measures;
- Setting out the role and purpose of regional fisheries management organizations and arrangements, including by offering definitions of their functions;
- Establishing general principles, such as the precautionary and ecosystem approaches for the conservation and management of straddling fish stocks and highly migratory fish stocks in all regions around the world;
- Requiring conservation and management measures to be adopted based on the best scientific evidence available and for States to be more cautious when information is uncertain, unreliable or inadequate;

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<sup>7</sup> Resolution 65/38, paragraphs 31-32.

- Strengthening the responsibility of flag States over fishing vessels flying their flag on the high seas;
- Requiring compatibility between conservation and management measures adopted for areas under national jurisdiction and those established in the adjacent high seas, so as to ensure conservation and management of fish stocks in their entirety;
- Providing mechanisms for the peaceful settlement of disputes between States Parties; and
- Recognizing the special requirements of developing countries in relation to conservation and management, including allowing them access to an assistance fund under Part VII of UNFSA.

The Agreement has encouraged States to become responsible fishing nations. It has also served as model legislation for fisheries management. A large number of States have incorporated its provisions into their fisheries laws and regulations.

At the regional level, several RFMO/As have conducted, or are in the process of conducting, performance reviews of their functions and mandates using the relevant provisions of the Agreement as a benchmark. Some organizations have also amended their constitutive instruments in order to incorporate the principles of the Agreement.

Four new regional fisheries management organizations have been created since the Agreement was adopted in 1995 - in the south-east Atlantic, the western Central Pacific, the southern Indian Ocean and the south Pacific Ocean. In addition, a convention for the establishment of a new organization in the north Pacific Ocean is now open for signature.

The General Assembly has encouraged countries to extend the principles of the Agreement to all fish stocks — stocks that are not straddling or migratory, but are found in the deep oceans or the high seas. The general principles of the Agreement are also key principles in the 2008 FAO International Guidelines for the management of deep-sea fisheries in the high seas and the protection of vulnerable marine ecosystems.

### **Assistance to developing States Parties**

Part VII of the Agreement addresses the “Requirements of Developing States.” In particular, article 25 of the Agreement requires States Parties to cooperate in order to enhance the ability of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks; to enable their participation in high seas fisheries for such stocks; and to facilitate their participation in sub-regional and regional fisheries management organizations and arrangements.

One of the forms of cooperation identified in article 25 is the provision of financial assistance. In accordance with article 26 of the Agreement, States are also required to

cooperate to establish special funds to assist developing States in the implementation of the Agreement. In this regard, at its 58th session, the General Assembly decided to establish the Assistance Fund under Part VII of the Agreement (the “Assistance Fund”) to assist developing States Parties in the implementation of the Agreement, in accordance with terms of reference that were agreed at the Second Round of Informal Consultations of the States Parties in 2003 (see resolution 58/14 of 24 November 2003).

As described in paragraph 14 of the Terms of Reference of the Assistance Fund, financial assistance may be sought for the following purposes:

- (i) Facilitating the participation of representatives from developing States Parties in the meetings and activities of relevant RFMO/As and in relevant meetings concerning high seas fisheries of relevant global organizations and other appropriate international and regional organizations and bodies;
- (ii) Supporting ongoing and future negotiations to establish new RFMO/As in areas where such bodies are not currently in place, to renegotiate founding agreements for such organizations and arrangements, and to strengthen existing RFMO/As in accordance with the Agreement;
- (iii) Building capacity for activities in key areas, such as effective exercise of flag State responsibilities, monitoring, control and surveillance, data collection and scientific research relevant to straddling and highly migratory fish stocks on a national and/or a regional level;
- (iv) Facilitating exchange of information and experience on the implementation of the Agreement;
- (v) Assisting developing States Parties to the Agreement with human resources development, technical training, and technical assistance in relation to conservation and management of straddling and highly migratory fish stocks and development of fisheries for such stocks, consistent with the duty to ensure the proper conservation and management of such stocks; and
- (vi) Assisting in meeting the costs involved in proceedings for the settlement of certain disputes between States Parties to the Agreement.