

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 January 2001

on the signing, on behalf of the European Community, of the Convention on the conservation and management of fishery resources in the South-East Atlantic Ocean

(2001/319/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community is competent to adopt measures for the conservation and management of fisheries resources and to enter into agreements with other countries and international organisations.
- (2) The Community is a Contracting Party to the United Nations Convention on the Law of the Sea, which requires all members of the international community to cooperate in conserving and managing the sea's biological resources.
- (3) The Community has signed the Agreement on 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⁽¹⁾.
- (4) The seventh meeting of the coastal States and other parties interested in the future Convention on the conservation and management of fishery resources in the South-East Atlantic Ocean presented a draft Convention.
- (5) The objective of this Convention is to ensure the long-term conservation and sustainable use of the fishery

resources in the Convention Area through the effective implementation of the Convention.

- (6) Community fishermen fish stocks in the Convention Area and it is in the Community's interest to play an effective role in the implementation of the Convention. It is therefore necessary for the Community to sign the Convention,

HAS DECIDED AS FOLLOWS:

Article 1

The signature of the Convention on the conservation and management of fishery resources in the South-East Atlantic Ocean is hereby approved on behalf of the European Community, subject to the Council Decision concerning the conclusion of the said Convention.

The text of the Convention is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Convention on behalf of the Community, subject to its conclusion.

Done at Brussels, 29 January 2001.

For the Council

The President

M. WINBERG

⁽¹⁾ OJ L 189, 3.7.1998, p. 16.

ANNEX

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF FISHERY RESOURCES IN THE SOUTH-EAST ATLANTIC OCEAN

The Contracting Parties to this Convention,

COMMITTED to ensuring the long term conservation and sustainable use of all living marine resources in the South-East Atlantic Ocean, and to safeguarding the environment and marine ecosystems in which the resources occur;

RECOGNISING the urgent and constant need for effective conservation and management of the fishery resources in the high seas of the South-East Atlantic Ocean;

RECOGNISING THE RELEVANT PROVISIONS of the United Nations Convention on the Law of the Sea of 10 December 1982; the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995; and taking into account the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 and the FAO Code of Conduct for Responsible Fisheries, 1995;

RECOGNISING the duties of States to cooperate with each other in the conservation and management of living resources in the South-East Atlantic Ocean;

DEDICATED to exercising and implementing the precautionary approach in the management of fishery resources, in line with the principles set out in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995, and with the FAO Code of Conduct for Responsible Fisheries, 1995;

RECOGNISING that the long term conservation and sustainable use of high seas fishery resources require cooperation among States through appropriate subregional or regional organisations which agree upon the measures necessary for this purpose;

COMMITTED to responsible fisheries;

NOTING that the coastal States have established areas of national jurisdiction in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982, and general principles of international law within which they exercise sovereign rights for the purpose of exploring and exploiting, conserving and managing living marine resources;

DESIRING cooperation with the coastal States and with all other States and Organisations having a real interest in the fishery resources of the South-East Atlantic Ocean to ensure compatible conservation and management measures;

RECOGNISING economic and geographical considerations and the special requirements of developing States, and their coastal communities, for equitable benefit from living marine resources;

CALLING upon States which are not Contracting Parties to this Convention, and which do not otherwise agree to apply the conservation and management measures adopted under this Convention, not to authorise vessels flying their flags to engage in fishing for the resources which are the subject of this Convention;

CONVINCED that the establishment of an organisation for the long term conservation and sustainable use of the fishery resources in the South-East Atlantic Ocean would best serve these purposes;

BEARING IN MIND that the achievements of the above will contribute to the realisation of a just and equitable economic order in the interests of all humankind, and in particular the special interests and needs of developing States,

HAVE AGREED AS FOLLOWS:

Article 1

to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995;

Use of terms

For the purposes of this Convention:

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

(b) '1995 Agreement' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating

(c) 'Coastal State' means any Contracting Party with waters under national jurisdiction which are adjacent to the Convention Area;

(d) 'Commission' means the South-East Atlantic Fisheries Commission established pursuant to Article 5;

- (e) 'Contracting Party' means any State or regional economic integration organisation which has consented to be bound by this Convention, and for which the Convention is in force;
- (f) 'Control measure' means any decision or action adopted by the Commission regarding observation, inspection, compliance and enforcement pursuant to Article 16;
- (g) 'Fisheries management organisation' means any intergovernmental organisation which has competence to take regulatory measures in relation to living marine resources;
- (h) 'Fishing' means:
- (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;
 - (iii) placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons;
 - (iv) any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel; or
 - (v) the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;
- (i) 'Fishing entity' means any fishing entity referred to in Article 1 paragraph 3 of the 1995 Agreement;
- (j) 'Fishing vessel' means any vessel used or intended for use for the purposes of the commercial exploitation of fishery resources, including mother ships, any other vessels directly engaged in such fishing operations, and vessels engaged in transshipment;
- (k) 'Fishing research vessel' means any vessel engaged in fishing, as defined in point (h), for scientific research purposes, including permanent research vessels or vessels normally engaged in commercial fishing operations, or fishing support activities;
- (l) 'Fishery resources' means resources of fish, molluscs, crustaceans and other sedentary species within the Convention Area, excluding:
- (i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention; and
 - (ii) highly migratory species listed in Annex I of the 1982 Convention;
- (m) 'Flag State' means, unless otherwise indicated:
- (i) a state whose vessels are entitled to fly its flag; or
 - (ii) a regional economic integration organisation in which vessels are entitled to fly the flag of a member State of that regional economic integration organisation;

- (n) 'Living marine resources' means all living components of marine ecosystems, including seabirds;
- (o) 'Regional economic integration organisation' unless otherwise specified, means a regional economic integration organisation to which all its member States have transferred competence over matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters; and
- (p) 'Transshipment' means unloading of all or any of the fishery resources on board a fishing vessel to another fishing vessel either at sea or in port without the products having been recorded by a port State as landed.

Article 2

Objective

The objective of this Convention is to ensure the long-term conservation and sustainable use of the fishery resources in the Convention Area through the effective implementation of this Convention.

Article 3

General principles

In giving effect to the objective of this Convention, the Contracting Parties, where appropriate through the Organisation, shall, in particular:

- (a) adopt measures, based on the best scientific evidence available, to ensure the long term conservation and sustainable use of the fishery resources to which this Convention applies;
- (b) apply the precautionary approach in accordance with Article 7;
- (c) apply the provisions of this Convention relating to fishery resources, taking due account of the impact of fishing operations on ecologically related species such as seabirds, cetaceans, seals and marine turtles;
- (d) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem as, or associated with or dependent upon, the harvested fishery resources;
- (e) ensure that fishery practices and management measures take due account of the need to minimise harmful impacts on living marine resources as a whole; and
- (f) protect biodiversity in the marine environment.

Article 4

Geographical application

Except as otherwise provided, this Convention applies within the Convention Area, being all waters beyond areas of national jurisdiction in the area bounded by a line joining the following points along parallels of latitude and meridians of longitude:

— beginning at the outer limit of waters under national jurisdiction at a point 6° South, thence due west along the 6° South parallel to the meridian 10° West, thence due north along the 10° West meridian to the equator, thence due west along the equator to the meridian 20° West, thence due south along the 20° West meridian to a parallel 50° South, thence due east along the 50° South parallel to the meridian 30° East, thence due north along the 30° East meridian to the coast of the African continent.

Article 5

The Organisation

1. The Contracting Parties hereby establish and agree to maintain the South-East Atlantic Fisheries Organisation, herein 'the Organisation'.

2. The Organisation shall comprise:

- (a) the Commission;
- (b) the Compliance and Scientific Committees, as subsidiary bodies, and any other subsidiary bodies that the Commission shall establish from time to time to assist in meeting the objective of this Convention; and
- (c) the Secretariat.

3. The Organisation shall have legal personality and shall enjoy in the territory of each of the Contracting Parties such legal capacity as may be necessary to perform its functions and achieve the objective of this Convention. The privileges and immunities to be enjoyed by the Organisation and its staff in the territory of a Contracting Party shall be determined by agreement between the Organisation and the Contracting Party concerned.

4. The official languages of the Organisation shall be English and Portuguese.

5. The headquarters of the Organisation shall be established in Namibia.

Article 6

The Commission

1. Each Contracting Party shall be a member of the Commission.

2. Each member shall appoint one representative to the Commission who may be accompanied by alternate representatives and advisers.

3. The functions of the Commission shall be to:

- (a) identify conservation and management needs;
- (b) formulate and adopt conservation and management measures;

(c) determine total allowable catches and/or levels of fishing effort, taking into account total fishing mortality, including of non-target species;

(d) determine the nature and extent of participation in fishing;

(e) keep under review the status of stocks and gather, analyse and disseminate relevant information on stocks;

(f) encourage, promote and, where appropriate by agreement, coordinate scientific research on fishery resources within the Convention Area and in adjacent waters under national jurisdiction;

(g) manage stocks on the basis of the precautionary approach to be developed in accordance with Article 7;

(h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(i) adopt measures concerning control and enforcement within the Convention Area;

(j) develop measures for the conduct of fishing for scientific research purposes;

(k) develop rules for the collection, submission, verification of, access to and use of data;

(l) compile and disseminate accurate and complete statistical data to ensure that the best scientific advice is available, while maintaining confidentiality, where appropriate;

(m) direct the Compliance and Scientific Committees, other subsidiary bodies, and the Secretariat;

(n) approve the budget of the Organisation; and

(o) carry out such other activities as may be necessary to fulfil its functions.

4. The Commission shall adopt its rules of procedure.

5. The Commission shall adopt measures, in accordance with international law, to promote compliance by vessels flying the flag of non-parties to this Convention with measures agreed by the Commission.

6. The Commission shall take full account of the recommendations and advice from the Scientific and Compliance Committees in formulating its decisions. The Commission shall, in particular, take full account of the biological unity and other biological characteristics of the stocks.

7. The Commission shall publish its conservation and management and control measures which are in force, and, as far as practicable, shall maintain records of other conservation and management measures in force in the Convention Area.

8. The measures referred to in paragraph 3 may include the following:

(a) the quantity of any species which may be caught;

(b) the areas and periods in which fishing may occur;

- (c) the size and sex of any species which may be taken;
- (d) the fishing gear and technology which may be used;
- (e) the level of fishing effort, including vessel numbers, types and sizes, which may be used;
- (f) the designation of regions and sub-regions;
- (g) other measures regulating fisheries with the objective of protecting any species; and
- (h) other measures the Commission considers necessary to meet the objective of this Convention.

9. Conservation and management and control measures adopted by the Commission in accordance with this Convention shall become effective in accordance with Article 23.

10. Taking account of Articles 116-119 of the 1982 Convention, the Commission may draw the attention of any State or fishing entity which is a non-party to this Convention to any activity which in the opinion of the Commission affects implementation of the objective of this Convention.

11. The Commission shall draw the attention of all Contracting Parties to any activity which in the opinion of the Commission undermines:

- (a) the implementation by a Contracting Party of the objective of this Convention, or the compliance of that Contracting Party with its obligations under this Convention; or
- (b) the compliance of that Contracting Party with its obligations under this Convention.

12. The Commission shall take account of measures established by other organisations which affect living marine resources in the Convention Area, and, without prejudice to the objective of this Convention, shall seek to ensure consistency with such measures.

13. If the Commission determines that a Contracting Party has ceased to participate in the work of the Organisation, the Commission shall consult with the Contracting Party concerned and may take a decision to address the matter, as it deems appropriate.

Article 7

Application of the precautionary approach

1. The Commission shall apply the precautionary approach widely to conservation and management and exploitation of fishery resources in order to protect those resources and preserve the marine environment.

2. The Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing this article, the Commission shall take cognisance of best international practices regarding the application of the precautionary approach, including Annex II of the

1995 Agreement and the FAO Code of Conduct for Responsible Fisheries, 1995.

Article 8

Meetings of the Commission

1. The Commission shall hold an annual meeting and any other meetings as deemed necessary.

2. The first meeting of the Commission shall be held within three months of the entry into force of this Convention, provided that among the Contracting Parties there are at least two States conducting fishing activities in the Convention Area. The first meeting shall, in any event, be held within six months of the entry into force of the Convention. The Government of Namibia shall consult with the Contracting Parties regarding the first Commission meeting. The provisional agenda shall be communicated to each signatory and Contracting Party not less than one month before the date of the meeting.

3. The first meeting of the Commission shall, *inter alia*, give priority consideration to the costs associated with implementation of the Annex by the Secretariat and measures to fulfil the functions of the Commission set out in Article 6.3(k) and (l).

4. The first meeting of the Commission shall be held at the headquarters of the Organisation. Thereafter, meetings of the Commission shall be held at the headquarters, unless the Commission decides otherwise.

5. The Commission shall elect from among the representatives of the Contracting Parties a chairperson and vice chairperson, each of whom shall serve for a term of two years and shall be eligible for re-election for one additional term of two years. The first chairperson shall be elected at the first meeting of the Commission for an initial term of three years. The chairperson and vice chairperson shall not be representatives of the same Contracting Party.

6. The Commission shall adopt rules of procedure to govern the participation of representatives from non-Parties to this Convention as observers.

7. The Commission shall adopt rules of procedure to govern the participation of representatives from inter-governmental organisations as observers.

8. Representatives from non-governmental organisations concerned with the stocks found in the Convention Area shall be given the opportunity to participate as observers in the meetings of the Organisation, subject to rules adopted by the Commission.

9. The Commission shall adopt rules to govern such participation and to provide for transparency in the activities of the Organisation. The rules shall not be unduly restrictive in this respect and shall provide for timely access to records and reports of the Organisation, subject to the procedural rules on access to them. The Commission shall adopt such rules of procedure as soon as possible.

10. The Contracting Parties may decide, by consensus, to invite representatives from non-parties to this Convention and from intergovernmental organisations to participate as observers until the rules regarding such participation are adopted by the Commission.

Article 9

The Compliance Committee

1. Each Contracting Party shall be entitled to appoint one representative to the Compliance Committee who may be accompanied by alternate representatives and advisers.

2. Unless otherwise decided by the Commission, the functions of the Compliance Committee shall be to provide the Commission with information, advice and recommendations on the implementation of, and compliance with, conservation and management measures.

3. In performing its functions, the Compliance Committee shall conduct activities as the Commission may direct and shall:

- (a) coordinate compliance activities undertaken by or on behalf of the Organisation;
- (b) coordinate with the Scientific Committee on matters of common concern; and
- (c) perform such other tasks as directed by the Commission.

4. The Compliance Committee shall meet as deemed necessary by the Commission.

5. The Compliance Committee shall adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.

6. The Compliance Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

Article 10

The Scientific Committee

1. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers.

2. The Scientific Committee may seek expert advice as required on an ad hoc basis.

3. The functions of the Scientific Committee shall be to provide the Commission with scientific advice and recommendations for the formulation of conservation and management measures for fishery resources covered by this Convention, and to encourage and promote cooperation in scientific research in order to improve knowledge of the living marine resources of the Convention Area.

4. In performing its functions, the Scientific Committee shall conduct such activities as the Commission may direct and shall:

- (a) consult, cooperate and encourage the collection, study and exchange of information relevant to the living marine resources of the Convention Area;
- (b) establish criteria and methods to be used in determining conservation and management measures;
- (c) assess the status and trends of relevant populations of living marine resources;
- (d) analyse data on the direct and indirect effects of fishing and other human activities on populations of fishery resources;
- (e) assess the potential effects of proposed changes in the methods or levels of fishing and of proposed conservation and management measures; and
- (f) transmit reports and recommendations to the Commission as directed, or on its own initiative, regarding conservation and management measures and research.

5. In carrying out its functions, the Scientific Committee shall seek to take into consideration the work of other fisheries management organisations, as well as other technical and scientific bodies.

6. The first meeting of the Scientific Committee shall be held within three months of the first meeting of the Commission.

7. The Scientific Committee shall adopt, and amend as necessary, rules of procedure for the conduct of its meetings and the exercise of its functions. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.

8. The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

Article 11

The Secretariat

1. The Commission shall appoint an Executive Secretary according to such procedures and on such terms and conditions as the Commission may determine.

2. The Executive Secretary shall be appointed for a term of four years and may be reappointed for one additional term not exceeding four years.

3. The Commission shall authorise such staff for the Secretariat as may be necessary and the Executive Secretary shall appoint, direct and supervise such staff according to staff regulations approved by the Commission.

4. The Executive Secretary and the Secretariat shall perform the functions delegated to them by the Commission.

*Article 12***Finance and budget**

1. At each annual meeting, the Commission shall adopt the Organisation's budget. In determining the size of the budget, the Commission shall give due consideration to the principle of cost effectiveness.

2. A draft budget for the Organisation's next financial year shall be prepared by the Executive Secretary and submitted to the Contracting Parties at least 60 days before the annual meeting of the Commission.

3. Each Contracting Party shall contribute to the budget. The contribution by each Contracting Party shall be according to a combination of an equal basic fee, and a fee based on the total catch in the Convention Area of species covered by the Convention. The Commission shall adopt and amend the proportion in which these contributions are applied taking into account the economic status of each Contracting Party. For Contracting Parties with territory adjoining the Convention Area, this shall be the economic status of that territory.

4. For the first three years following the Convention's entry into force, or a shorter period as decided by the Commission, the contribution of each Contracting Party shall be equal.

5. The Commission may request and accept financial contributions and other forms of assistance from organisations, individuals and other sources for purposes connected with the fulfilment of its functions.

6. The financial activities of the Organisation, including the proportion of contributions referred to in paragraph 3, shall be conducted in accordance with Financial Regulations adopted by the Commission and shall be subject to an annual audit by independent auditors appointed by the Commission.

7. Each Contracting Party shall meet its own expenses arising from attendance at meetings of the bodies of the Organisation.

8. Unless otherwise decided by the Commission, a Contracting Party that is in arrears with its payment of any monies owing to the Organisation by more than two years:

- (a) shall not participate in the taking of any decisions by the Commission; and
- (b) may not notify non-acceptance of any measure adopted by the Commission until it has paid all monies owing by it to the Organisation.

*Article 13***Contracting Party obligations**

1. Each Contracting Party shall, in respect of its activities within the Convention Area:

- (a) collect and exchange scientific, technical and statistical data with respect to fisheries resources covered by this Convention;
- (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of the Commission;
- (c) take appropriate measures to verify the accuracy of such data;
- (d) provide annually to the Organisation such statistical, biological and other data and information as the Commission may require;
- (e) provide to the Organisation in the manner and at such intervals as may be required by the Commission, information concerning its fishing activities, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics; and
- (f) provide to the Commission at such intervals as it may require information on steps taken to implement the conservation and management measures adopted by the Commission.

2. Each coastal State shall, in respect of activities that occur in its area of national jurisdiction relating to straddling stocks of fishery resources, provide to the Organisation data required in accordance with paragraph 1.

3. Each Contracting Party shall promptly implement this Convention and any conservation, management and other measures or matters which may be agreed by the Commission.

4. Each Contracting Party shall take appropriate measures, in accordance with the measures adopted by the Commission and international law, in order to ensure the effectiveness of the measures adopted by the Commission.

5. Each Contracting Party shall transmit to the Commission an annual statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this Article.

- 6. (a) Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, to the greatest extent possible, take measures, or cooperate, to ensure that its nationals fishing in the Convention Area and its industries comply with the provisions of this Convention. Each Contracting Party shall, on a regular basis, inform the Commission of such measures taken.

- (b) Fishing opportunities granted to the Contracting Parties by the Commission shall be exercised exclusively by vessels flying the flag of Contracting Parties.

7. Each coastal State shall regularly inform the Organisation of the measures they have adopted for fishery resources within areas of water under their national jurisdiction adjacent to the Convention Area.

8. Each Contracting Party shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights recognised in this Convention in a manner which would not constitute an abuse of rights.

Article 14

Flag State duties

1. Each Contracting Party shall take such measures as may be necessary to ensure that vessels flying its flag comply with the conservation and management and control measures adopted by the Commission and that they do not engage in any activities which undermine the effectiveness of such measures.

2. Each Contracting Party shall authorise the use of vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention.

3. Each Contracting Party shall take appropriate measures in respect of vessels flying its flag which are in accordance with measures adopted by the Commission and which give effect thereto, and which take account of existing international practices. These measures shall include, *inter alia*:

- (a) measures to ensure that a flag State investigates immediately and reports fully on actions taken in response to an alleged violation by a vessel flying its flag of measures adopted by the Commission;
- (b) control of such vessels in the Convention Area by means of fishing authorisation;
- (c) establishment of a national record of fishing vessels authorised to fish in the Convention Area and provision for sharing this information with the Commission on a regular basis;
- (d) requirements for marking of fishing vessels and fishing gear for identification;
- (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, catch landed, catch transhipped, fishing effort and other relevant fisheries data;
- (f) regulation of transhipment to ensure that the effectiveness of conservation and management measures is not undermined;
- (g) measures to permit access by observers from other Contracting Parties to carry out functions as agreed by the Commission; and
- (h) measures to require the use of a vessel monitoring system as agreed by the Commission.

4. Each Contracting Party shall ensure that vessels flying its flag do not undermine measures agreed by the Commission through unauthorised fishing within areas adjacent to the Convention Area on stocks occurring in the Convention Area and the adjacent area.

Article 15

Port State duties and measures taken by a port State

1. Measures taken by a port State in accordance with this Convention shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures.

2. Each Contracting Party shall, in accordance with measures agreed by the Commission, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. Each Contracting Party shall, in accordance with measures agreed by the Commission, adopt regulations in accordance with international law to prohibit landings and transshipments by vessels flying the flag of non-parties to this Convention where it has been established that the catch of a stock covered by this Convention has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission.

4. In the event that a port State considers that there has been a violation by a Contracting Party vessel of a conservation and management or control measure adopted by the Commission, the port State shall draw this to the attention of the flag State concerned and, as appropriate, the Commission. The port State shall provide the flag State and the Commission with full documentation of the matter, including any record of inspection. In such cases, the flag State shall transmit to the Commission details of actions it has taken in respect of the matter.

5. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

6. All measures taken under this article shall be taken in accordance with international law.

Article 16

Observation, inspection, compliance and enforcement

1. The Contracting Parties, through the Commission, shall establish a system of observation, inspection, compliance and enforcement, hereafter 'the System', to strengthen the effective exercise of flag State responsibility by Contracting Parties for fishing vessels and fishing research vessels flying their flags in the Convention Area. The major purpose of the System is to ensure that Contracting Parties effectively discharge their obligations under this Convention and, where applicable, under the 1995 Agreement, in order to ensure compliance with the conservation and management measures agreed by the Commission.

2. In establishing the System, the Commission shall be guided, *inter alia*, by the following principles:

- (a) fostering of cooperation among Contracting Parties to ensure effective implementation of the System;

(b) a System which is impartial and non-discriminatory in nature;

(c) verification of compliance with conservation and management measures agreed by the Commission; and

(d) prompt action on reports of infringements in contravention of measures agreed by the Commission.

3. In applying these principles the System shall, *inter alia*, comprise the following elements:

(a) control measures, including the authorisation of vessels to fish, the marking of vessels and fishing gear, the recording of fishing activities, and the near-to-real time reporting of vessel movements and activities by means such as satellite surveillance;

(b) an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels, on a reciprocal basis;

(c) an observer programme based on common standards for the conduct of observation, including, *inter alia*, arrangements for the placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party with the consent of that Party; an appropriate level of coverage for different sizes and types of fishing vessels and fishery research vessels; and measures for reporting by observers of information regarding apparent violations of conservation and management measures, taking into account the need to ensure the safety of observers; and

(d) procedures for the follow-up on infringements detected under the System, including standards of investigation, reporting procedures, notification of proceedings and sanctions, and other enforcement actions.

4. The System shall have a multilateral and integrated character.

5. In order to strengthen the effective exercise of flag State responsibility by Contracting Parties for fishing vessels and fishery research vessels flying their flags in the Convention Area, the interim arrangements set out in the Annex, which forms an integral part of this Convention, shall apply upon entry into force of this Convention and remain in force until the establishment of the System or until the Commission decides otherwise.

6. If, within two years of the entry into force of this Convention, the Commission has not established the System, the Commission shall, at the request of any Contracting Party, give urgent consideration to adoption of boarding and inspection procedures in order to strengthen the effective discharge by Contracting Parties of their obligations under this Convention and where applicable, under the 1995 Agreement. A special meeting of the Commission may be convened for this purpose.

Article 17

Decision making

1. Decisions of the Commission on matters of substance shall be taken by consensus of the Contracting Parties present. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 shall be taken by a simple majority of the Contracting Parties present and voting.

3. In the taking of decisions pursuant to this Convention, a regional economic integration organisation shall have only one vote.

Article 18

Cooperation with other organisations

1. The Organisation shall cooperate, as appropriate, with the Food and Agriculture Organisation of the United Nations and with other specialised agencies and organisations on matters of mutual interest.

2. The Organisation shall seek to develop cooperative working relationships with other inter-governmental organisations which can contribute to their work and which have an interest in ensuring the long-term conservation and sustainable use of living marine resources in the Convention Area.

3. The Commission may enter into agreements with the organisations referred to in this article and with other organisations as may be appropriate. The Commission may invite such organisations to send observers to its meetings, or to the meetings of any subsidiary bodies of the Organisation.

4. In the application of Articles 2 and 3 of this Convention to fishery resources, the Organisation shall cooperate with other relevant fisheries management organisations and take account of their conservation and management measures applicable in the region.

Article 19

Compatibility of conservation and management measures

1. The Contracting Parties recognise the need to ensure compatibility of conservation and management measures adopted for straddling fish stocks on the high seas and in areas under national jurisdiction. To this end, the Contracting Parties have a duty to cooperate for the purposes of achieving compatible measures in respect of such stocks of fisheries resources as occur in the Convention area and in areas under the jurisdiction of any Contracting Party. The appropriate Contracting Party and the Commission shall accordingly promote the compatibility of such measures. This compatibility shall be ensured in such a way which does not undermine measures established in accordance with Articles 61 and 119 of the 1982 Convention.

2. For the purpose of paragraph 1, the coastal States and the Commission shall develop and agree on standards for reporting and exchanging data on fisheries for the stocks concerned as well as statistical data on the status of the stocks.

3. Each Contracting Party shall keep the Commission informed of its measures and decisions taken in accordance with this Article.

Article 20

Fishing opportunities

1. In determining the nature and extent of participatory rights in fishing opportunities, the Commission shall take into account, *inter alia*:

- (a) the state of fishery resources including other living marine resources and existing levels of fishing effort, taking into account the advice and recommendations of the Scientific Committee;
- (b) respective interests, past and present fishing patterns, including catches, and practices in the Convention Area;
- (c) the stage of development of a fishery;
- (d) the interests of developing States in whose areas of national jurisdiction the stocks also occur;
- (e) contributions to conservation and management of fishery resources in the Convention Area, including the provision of information, the conduct of research and steps taken to establish cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (f) contributions to new or exploratory fisheries, taking account of the principles set out in Article 6.6 of the 1995 Agreement;
- (g) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks in the South-East Atlantic; and
- (h) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of fishery resources.

2. In applying the provisions of paragraph 1, the Commission may, *inter alia*:

- (a) designate annual quota allocations or effort limitations for Contracting Parties;
- (b) allocate catch quantities for exploration and scientific research; and
- (c) set aside fishing opportunities for non-parties to this Convention, if necessary.

3. The Commission shall, subject to agreed rules, review quota allocations, effort limitations and participation in fishing opportunities of Contracting Parties taking into account the information, advice and recommendations on the implementa-

tion of, and compliance with, conservation and management measures by Contracting Parties.

Article 21

Recognition of the special requirements of developing States in the region

1. The Contracting Parties shall give full recognition to the special requirements of developing States in the region in relation to conservation and management of fishery resources and the development of such resources.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for stocks covered by this Convention, the Contracting Parties shall take into account the special requirements of such developing States, in particular:

- (a) the vulnerability of developing States in regions which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers; and
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States in the region.

3. The Contracting Parties shall cooperate through the Commission and other subregional or regional organisations involved in the management of fishery resources:

- (a) to enhance the ability of developing States in the region to conserve and manage fishery resources and to develop their own fisheries for such resources; and
- (b) to assist developing States in the region which may fish for fishery resources, to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Convention.

4. Cooperation with developing States in the region for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:

- (a) improved conservation and management of the fishery resources covered by this Convention through collection, reporting, verification, exchange and analysis of fisheries data and related information;
- (b) stock assessment and scientific research; and
- (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 22

Non-Parties to this Convention

1. The Contracting Parties shall, either directly or through the Commission, request non-parties to this Convention whose vessels fish in the Convention Area to cooperate fully with the Organisation either by becoming party to the Convention or by agreeing to apply the conservation and management measures adopted by the Commission with a view to ensuring that such measures are applied to all fishing activities in the Convention Area. Such non-parties to this Convention shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the relevant stocks.

2. Contracting Parties may exchange information between each other or through the Commission on, and shall inform the Commission of activities of, fishing vessels flying the flags of the non-parties to this Convention which are engaged in fishing operations in the Convention Area, and of any action taken in response to fishing by non-parties to this convention. The Commission shall share information on such activities with other appropriate regional or subregional organisations and arrangements.

3. The Contracting Parties may, either directly or through the Commission, take measures, which are consistent with international law, and which they deem necessary and appropriate, to deter fishing activities by fishing vessels of non-parties to this Convention which undermine the effectiveness of conservation and management measures adopted by the Commission.

4. The Contracting Parties shall, individually or jointly, request fishing entities which have fishing vessels in the Convention Area to cooperate fully with the organisation in implementing conservation and management measures, with a view to having such measures applied de facto as extensively as possible to fishing activities in the Convention Area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

The Commission may invite non-parties to this Convention to send observers to its meetings, or to the meetings of any subsidiary bodies of the Organisation.

Article 23

Implementation

1. Conservation and management and control measures adopted by the Commission shall become binding on the Contracting Parties in the following manner:

(a) the Executive Secretary shall notify promptly in writing all Contracting Parties of such a measure following its adoption by the Commission;

(b) the measure shall become binding upon all Contracting Parties 60 days after notification by the Secretariat of the measure's adoption by the Commission, pursuant to subparagraph (a), unless otherwise specified in the measure;

(c) if a Contracting Party, within 60 days following the notification specified in subparagraph (a), notifies the Commission that it is unable to accept a measure, that measure shall not, to the extent stated, be binding upon that Contracting Party; however, the measure shall remain binding on all other Contracting Parties unless the Commission decides otherwise;

(d) any Contracting Party which makes a notification under subparagraph (c) shall at the same time provide a written explanation of its reasons for making the notification and, where appropriate, its proposals for alternative measures which the Contracting Party is going to implement. The explanation shall specify *inter alia* whether the basis for the notification is that:

(i) the Contracting Party considers that the measure is inconsistent with the provisions of this Convention;

(ii) the Contracting Party cannot practicably comply with the measure;

(iii) the measure unjustifiably discriminates in form or in fact against the Contracting Party; or

(iv) other special circumstances apply;

(e) the Executive Secretary shall promptly circulate to all Contracting Parties details of any notification and explanation received in accordance with subparagraphs (c) and (d);

(f) in the event that any Contracting Party invokes the procedure set out in subparagraphs (c) and (d), the Commission shall meet at the request of any other Contracting Party to review the measure. At the time of such a meeting and within 30 days following the meeting, any Contracting Party shall have the right to notify the Commission that it is no longer able to accept the measure, in which case that Contracting Party shall no longer be bound by the measure; and

(g) pending the conclusions of a review meeting called in accordance with subparagraph (f), any Contracting Party may request an ad hoc expert panel established in accordance with Article 24 to make recommendations on any interim measures following the invocation of the procedures pursuant to subparagraphs (c) and (d) which may be necessary in respect of the measure to be reviewed. Subject to paragraph 3, such interim measures shall be binding on all Contracting Parties if all Contracting Parties (other than those who have indicated that they are unable to accept the measure, pursuant to subparagraphs (c) and (d)) agree that the long term sustainability of the stocks covered by this Convention will be undermined in the absence of such measures.

2. Any Contracting Party which invokes the procedure set out in paragraph 1 may at any time withdraw its notification of non-acceptance and become bound by the measure immediately if it is already in effect or at such time as it may come into effect under this article.

3. This article is without prejudice to the right of any Contracting Party to invoke the dispute settlement procedures set out in Article 24 in respect of a dispute concerning the interpretation or application of this Convention, in the event that all other methods to settle the dispute, including the procedures set out in this article, have been exhausted.

Article 24

Dispute settlement

1. The Contracting Parties shall cooperate in order to prevent disputes.

2. If any dispute arises between two or more Contracting Parties concerning the interpretation or implementation of this Convention, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. In cases where a dispute between two or more Contracting Parties is of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Commission at its first meeting. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

4. Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in paragraph 2, or where a dispute is not resolved by recourse to other means referred to in this article within a reasonable time, such dispute shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also Parties to these instruments.

5. A court, tribunal or panel to which any dispute has been submitted under this article shall apply the relevant provisions of this Convention, of the 1982 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.

Article 25

Signature, ratification, acceptance and approval

1. This Convention shall be open for signature on 20 April 2001, in Windhoek, Namibia, and subsequently at the headquarters of the Food and Agriculture Organisation of the United Nations for one year from its adoption on 20 April 2001 by all States and regional economic integration organisations participating in the Conference on the South-East Atlantic Fisheries Organisation held on 20 April 2001 and by all States and regional economic integration organisations whose vessels fish, or have fished in the Convention Area, for fishery resources covered by this Convention, in the four years preceding the adoption of the Convention.

2. This Convention shall be subject to ratification, acceptance or approval by the States and regional economic integration organisations referred to in paragraph 1. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of the Food and Agriculture Organisation of the United Nations, hereafter 'the Depositary'.

Article 26

Accession

1. This Convention shall be open for accession by coastal States, and by all other States and regional economic integration organisations whose vessels fish in the Convention Area for fishery resources covered by this Convention.

2. This Convention shall be open for accession by regional economic integration organisations, other than that regional economic integration organisation that qualifies as a Contracting Party under Article 25, which include among their member States one or more States which have transferred, in whole or in part, competence over matters covered by this Convention. The accession of such regional economic integration organisations shall be the subject of consultations within the Commission concerning the conditions for participation in the work of the Commission.

3. Instruments of accession shall be deposited with the Depositary. Accessions received by the Depositary prior to the date of entry into force of this Convention shall become effective 30 days after the date on which this Convention enters into force.

Article 27

Entry into force

This Convention shall enter into force 60 days after the date of deposit with the Depositary of the third instrument of ratification, accession, acceptance or approval at least one of which has been deposited by a coastal State. For each State or regional economic integration organisation which, subsequent to the date of entry into force of this Convention, deposits an instrument of ratification or accession, this Convention shall enter into force on the thirtieth day following such deposit.

Article 28

Reservations and exceptions

No reservations or exceptions may be made to this Convention.

Article 29

Declarations and statements

Article 28 does not preclude a State or regional economic integration organisation, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonisation of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State or regional economic integration organisation.

Article 30

Relation to other agreements

This Convention shall not alter the rights and obligations of Contracting Parties which arise from the 1982 Convention and other agreements compatible with the 1982 Convention and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

Article 31

Maritime claims

Nothing in this Convention shall constitute recognition of the claims or positions of any of the Contracting Parties concerning the legal status and extent of waters and zones claimed by any such Contracting Party.

Article 32

Amendment

1. Any Contracting Party may at any time propose amendments to this Convention.

2. Any proposed amendment shall be notified in writing to the Executive Secretary at least 90 days prior to the meeting at which it is proposed to be considered, and the Executive Secretary shall promptly transmit the proposal to all Contracting Parties. Proposed amendments to the Convention shall be considered at the annual meeting of the Commission, unless a majority of the Contracting Parties request a special meeting to discuss the proposed amendment. A special meeting may be convened on not less than 90 days' notice.

3. The text of any amendment adopted by the Commission shall be transmitted promptly by the Executive Secretary to all Contracting Parties.

4. An amendment shall enter into force on the thirtieth day following the deposit of instruments of ratification, acceptance or approval thereof from all Contracting Parties.

Article 33

Withdrawal

1. A Contracting Party may, by written notification addressed to the Depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect one year after the date of receipt of the notification by the Depositary, unless the notification specifies a later date.

2. Withdrawal from this Convention by any Contracting Party shall not affect its financial obligations under this Convention incurred prior to its withdrawal becoming effective.

Article 34

Registration

1. The Director-General of the Food and Agriculture Organisation of the United Nations shall be the Depositary of this Convention, and any amendments or revisions thereto. The Depositary shall:

- (a) send certified copies of this Convention to each signatory to this Convention and to all Contracting Parties;
- (b) arrange for the registration of this Convention, upon its entry into force, with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations;
- (c) inform each signatory to this Convention and all Contracting Parties of:
 - (i) instruments of ratification, accession, acceptance and approval deposited in accordance with Articles 25 and 26 respectively;
 - (ii) the date of entry into force of the Convention in accordance with Article 27;
 - (iii) the entry into force of amendments to this Convention in accordance with Article 32;
 - (iv) withdrawals from this Convention pursuant to Article 33.

2. The language of communication for the functions of the Depositary shall be English.

