

Natural Resources Defense Council * Greenpeace * Conservation International * National Environmental Trust
Marine Conservation Biology Institute

**Review Conference on 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**

May 2006

Elements for assessing the adequacy and effectiveness of the Agreement

Summary:

States Parties to the Review Conference should:

- 1) Recommend that the 2006 UNGA Fisheries Resolution include a recommendation that States immediately:
 - a. apply the provisions of the FSA to the management of all high seas fish stocks; and
 - b. suspend destructive practices, such as bottom trawl fishing in areas beyond national jurisdiction, until adequate measures for conserving and sustainably managing fisheries and marine biodiversity beyond national jurisdiction are adopted and implemented.
- 2) Establish terms of reference and a timeline for a regular, transparent, and independent assessment of RFMO actions and their effectiveness in implementing the conservation provisions of the Agreement, specifically Articles 5 and 6, along with specific recommendations for improvement. An independent standing committee should be established with the mandate and resources to produce standards and criteria applicable to all RFMOs, and review RFMO actions and inactions against them. Such a process is essential to ensure consistent application of key elements of the FSA across RFMOs. Such elements include ecosystem-based management (including creation of marine reserves); the precautionary approach (including prior environmental impact assessment); and effective decision-making that moves away from the current consensus based decision-making and opt-out provisions.
- 3) Agree to undertake initiatives to increase the number of parties to the agreement, particularly key fishing nations, and overcome existing objections.
- 4) Implement a process to ensure that new RFMOs are established everywhere that fishing is taking place and in the meantime, ensure that States provisionally implement the FSA and relevant UNGA resolutions in all their fishing activities.
- 5) Recommend that States and RFMOs implement universal coverage of real-time and tamper proof VMS systems on all high seas fishing vessels, a mechanism for information sharing on all high seas vessels operating within the area, national controls on citizens and corporations, rigorous port state inspections and controls, and development of catch and trade documentation schemes. An enhanced MCS network should be developed as a matter of urgency.

UNFSA part	General elements	Detailed elements	Comment
II. Conservation and management of stocks	Adoption of measures	Extent to which States parties, individually and through RFMOs, have adopted measures, based on the best scientific evidence available and the precautionary approach, to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks, in accordance with articles 5-7 and annex II, including for new and exploratory fisheries.	<p>Those who wish to use high seas oceans resources must show that they will not cause harm to the marine environment, and that their activities will be sustainable and equitable, before they undertake such activities.</p> <p>New and exploratory fisheries must be closed to fishing until they have been assessed and measures put in place to effectively regulate them. In the absence of assessment and measures being agreed and implemented, there should be no fishing. It is not acceptable that damage to fish, their habitats, and marine biodiversity occurs before rules are implemented and enforced.</p> <p>High seas bottom trawling is a clear example of the failure to adopt measures required by arts 5-7 of the FSA.</p>
	Overfishing and capacity management	Extent to which States Parties, individually and through RFMOs, have taken measures to prevent or eliminate overfishing and excess fishing capacity.	Overfishing, overcapacity and capacity migration must be addressed. Reference is made to the FAO International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity).
	Effects of fishing on the marine environment	Extent to which States parties, individually and through RFMOs, have taken measures to implement ecosystem approaches to fisheries management, including by minimizing catch of non-target species and by protecting habitats of specific concern, in accordance with article 5 (d)-(g) and article 6 (3) (d).	<p>Effective, comprehensive precautionary and ecosystem approaches to fisheries management have yet to be reflected in measures adopted by most RFMOs or by States fishing on the high seas.</p> <p>Of particular concern are deep sea organisms, which are long-lived, slow-growing and extremely vulnerable to overfishing.¹ These ecosystems are collectively regarded as a globally important reservoir of biodiversity, and deep-sea scientists are discovering species new to science with practically every voyage.</p> <p>States should establish terms of reference and a timeline for a regular, transparent, and independent assessment of RFMO actions and their effectiveness in meeting the obligations and principles they have agreed to under UNCLOS, the FSA, the FAO Code of Conduct on</p>

			<p>Responsible Fisheries, and other relevant agreements. In particular this review should identify the geographical gaps and the competency of RFMOs to deliver ecosystem-based, precautionary fisheries management and eliminate IUU fishing. The review should include concrete time-bound recommendations to be implemented by RFMOs.</p> <p>The Review Conference should also agree on a consultation framework for RFMOs to exchange information and ideas, as well as a mechanism for ongoing consultations.</p>
	<p>Fisheries not regulated by an RFMO</p>	<p>Extent to which States parties have cooperated to address fisheries for straddling fish stocks or highly migratory fish stocks that are not regulated by an RFMO, in accordance with part III generally, particularly articles 8 (2) and (5), 9 and 14. Extent to which States parties are cooperating to establish new RFMOs where needed for the conservation and management of major straddling fish stocks and highly migratory fish stocks, in accordance with article 8 (5).</p>	<p>The majority of the high seas (some 75%) are not even covered by RFMOs with the competence to manage deep-sea fisheries. As a result, bottom trawl fishing is completely unregulated in most areas of the high seas.</p> <p>In those areas where new RFMOs are being established, marine life continues to be damaged while negotiations continue. There has been little or no progress toward adoption of effective interim protection measures consistent with either the conservation provisions of the FSA or more recent UNGA resolutions. For example, while negotiations are underway to establish an RFMO for the South Pacific, they are not expected to be concluded for four years or more. There are no interim measures agreed yet.²</p> <p>An RFMO on paper is ineffective without actual appropriate and effective measures. For example, the Southeast Atlantic Fisheries Organization (SEAFO) has recently been established but has not adopted measures to regulate high seas bottom trawling. A concluded agreement such as SIOFA (which has not yet been signed and does not include interim measures controlling fishing) does not mean the conservation and management issues have been addressed. Only actual measures, and actual implementation and enforcement of those measures, suffices.</p> <p>The exclusion of high seas stocks is a glaring gap in current oceans governance which urgently needs to be addressed by the international community. The mandate of the FSA must be extended to cover all high seas fish stocks, perhaps by the inclusion of a technical annex to this effect. While this is in process, and before concrete measures have been put in place to protect deep sea fisheries and ecosystems, the UNGA must act this year to establish and implement urgent interim measures such as a moratorium on high seas bottom trawling to stop the destruction of high seas biodiversity.</p>
	<p>Data collection and sharing</p>	<p>Extent to which States parties, individually and through RFMOs, collect and</p>	<p>Data collection is not a substitute for effective conservation action.</p> <p>The Northwest Atlantic Fisheries Organization (NAFO) adopted a proposal requesting</p>

		share, in a timely manner, complete and accurate data concerning fishing activities on straddling fish stocks and highly migratory fish stocks, including for new or exploratory fisheries and fisheries not regulated by an RFMO, in accordance with Arts. 6 and 14, and annex 1.	Contracting Parties to collect data that will be used to develop criteria for determining areas of marine biological and ecological significance and identifying such areas in the NAFO regulatory Area, but has not adopted any concrete protective measures.
III. and IV. Mechanisms for international cooperation; non- members	Integrity of RFMO regimes	Extent to which States parties whose vessels fish for any straddling fish stocks and highly migratory fish stocks under the purview of any RFMO have either joined or agreed to join that RFMO or applied the measures adopted by such RFMO to the fishing activities of its vessels.	Barriers to entry to new members including a narrow definition of a ‘real interest’ may encourage non-members to expand their fishing activities to build a track record, at the expense of the fishery.
	Fishing activity by non-members	Extent of fishing activity for straddling fish stocks and highly migratory fish stocks by vessels of States parties that are not members or “cooperating nonmembers” ^b of relevant RFMOs. Measures to deter such activity.	-A narrow definition of a ‘real interest’ may encourage non-members to step up fishing activities to build a track record. -Where States are fishing in areas where there is an RFMO but do not join the RFMO or apply the measures, they should not have access to the fishery resources to which those measures apply (art 8(4)). -Between 1999 and 2003, 66 sightings were made of vessels from Non-Contracting Parties fishing in the NEAFC area. Monitoring, control and surveillance activities in this area are thus clearly inadequate. Since this is the case for an area covered by an RFMO with competence, the situation for high seas areas where there are no competent RFMO can only be expected to be more acute.
	Functioning of RFMOs	Extent to which RFMOs established prior to the Agreement have modernized their procedures and practices in accordance with the Agreement. Extent to which all RFMOs are fulfilling functions set forth in article 10, determining the participatory rights of new	With a few notable exceptions (IATTC, CCAMLR), few RFMOs have updated their charters, procedures and practices in accordance with the Agreement. Moreover, it is nearly two years since the General Assembly in para 67 called upon RFMOs with the competence to regulate bottom fisheries; and to urgently adopt, in their regulatory areas, measures to address the impact of destructive fishing practices, including bottom trawling, which has adverse impacts on vulnerable marine ecosystems, and to ensure compliance with such measures. Para. 68 called on RFMOs without the competence to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems to expand the competence.

		members in accordance with article 11 and operating in accordance with the transparency provisions of article 12.	RFMOs need to be fundamentally changed, to become Regional Ecosystem Management Organizations (REMOs). They must shift from single-species management to precautionary ecosystem management and must be given the functional ability, capacity and mandate to address the broader ecological impacts of human activities on and under the oceans.
	Participatory rights	Extent to which RFMOs have agreed, as appropriate, on participatory rights, such as allocations of allowable catch or levels of fishing effort.	Allowable catch or levels of fishing effort are tied to other provisions of art 10 such as conservation management measures and international minimum standards. This link must be implemented by all RFMOs.
V. and VI. Monitoring, control and surveillance; compliance and enforcement	Implementation of flag State duties	Extent to which States parties are fulfilling their duties as flag States under article 18 relating to: licensing and authorization of vessels; establishing national records of vessels; marking of vessels and gear; reporting and catch verification; monitoring, control and surveillance; and trans-shipment regulation.	States must act immediately to implement their duties as responsible flag States. National measures to effect this with regard to unregulated high seas stocks that similarly apply to any straddling and highly migratory fish stocks should include: prohibit fishing vessels flagged to their countries from fishing on the high seas in contravention of protection measures; make it a violation to engage in actions in breach of conservation measures or to trade in fish or fish products derived from such fishing adopt and implement a blacklist of non-complying vessels; prevent transshipment at sea of species caught in breach of conservation measures; prohibit nationals to re-flag vessels to avoid compliance with conservation measure; deny the authorisation to fish (by any method and for any species) by fishing vessels (and their owners/operators) that operate in contravention of conservation measures; adopt and implement a blacklist of non-complying vessels; deny EEZ fishing permits or high seas permits (for flagged vessels or nationals) to vessels that have engaged in fishing in breach of conservation measures.
	Investigation, penalization for violations	Extent to which flag States parties are expeditiously carrying out relevant investigations and judicial proceedings, and imposing sanctions in respect of violations, in accordance with article 19.	States that breach their flag State duties should be penalised in terms of their participation in RFMOs and their fisheries allocations in such areas. States should prohibit fishing vessels flagged to their countries from fishing on the high seas in contravention of protection measures.
	Use of port State measures	Extent to which port States parties have adopted measures to promote the effectiveness of RFMO	Port State measures can include actions to: a) Conduct in-port inspections of fishing vessels wishing to use port facilities; b) prevent bunkering and discharging or processing of catches for vessels found to have engaged in fishing in breach of conservation measures; c) deny the

		measures. Extent to which RFMOs have adopted such measures.	use of port facilities for landing, transshipping or processing fish if the vessel is flagged to a non-contracting or co-operating part of a RFMO, or has been identified as having been involved in fishing in breach of conservation measures or vessel has been blacklisted) implement domestic legislation providing for punitive action, similar to the US Lacey Act; e) set the maximum permissible fines for infringement of fisheries laws high enough to serve as a credible deterrent; f) negotiate binding intergovernmental port state enforcement agreements; g) improving information sharing and cooperation among RFMOs and States; and h) improve information sharing and cooperation among RFMOs and States.
	International cooperation	Extent to which States parties, individually and through RFMOs, cooperate to ensure compliance with and enforcement of conservation and management measures for straddling fish stocks and highly migratory fish stocks, in accordance with articles 10 (h), 20 and 22.	States should implement universal coverage of tamper-proof VMS systems with real-time reporting mechanisms on all vessels with a permit/license to fish, which will enable states to distinguish vessels fishing on the high seas from those fishing in EEZs. States should develop appropriate measures through the MCS Network States should exchange, pool and publicise information on vessels and companies involved in IUU fishing (including the operators, captains and beneficial owners of such vessels, and those providing banking, insurance and other services to them) to allow appropriate action to be taken against them if they are found to have infringed conservation measures States should Implement catch documentation and market certification schemes.
VII. Developing States	Recognition of special requirements, provision of assistance, capacity-building	Extent to which States parties, individually and through RFMOs and other relevant mechanisms, are taking into account the special requirements of developing States and are increasing the capacity of such States in implementing the Agreement, including by providing assistance. Extent to which developing States parties are gaining such capacity.	Build capacity to implement flag State, port State and national control measures Ensure that participation in RFMOs is not predicated on past fishing to avoid developing States needing to engage in unsustainable fishing to build track record Take effective measures to address IUU fishing and enhance capacity of developing States to implement port State control measures.
IX. Non-parties	Increasing adherence to United	Movement of additional States towards becoming party to the United Nations	Set in place an ongoing negotiating framework to address the dispute over art. 7, 21 and 22

	Nations Fish Stocks Agreement	Fish Stocks Agreement. Impediments that have prevented some States from becoming party, such as issues relating to articles 7, 21 and 22.	
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¹ See Jennifer A. Devine, Krista D. Baker and Richard L Hedrick, “Deep-sea fishes qualify as endangered,” *Nature*, 5 January 2006.

² Interim measures are due to be circulated 60 days prior to the next meeting, on 6-10 November 2006: Report of the First International Meeting on the Establishment of the proposed South Pacific Regional Fisheries Management Organisation, Wellington, New Zealand, 14-17 February 2006, para 6(ii).

^b For the purposes of the present table, “cooperating non-members” refers to States that are not members of a relevant RFMO but that have agreed to apply the measures of that RFMO.