

**Report Prepared for the Governments of the  
Organization of Eastern Caribbean States on the  
Implementation of Recent International Fisheries  
Agreements**

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## *Summary*

Two recently concluded international fisheries agreements, the *Agreement for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* and the *FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, have important implications for members of the Organisation of Eastern Caribbean States ("OECS").

This report :

- outlines the key provisions of both agreements;
- briefly summarises the factual issues within the OECS which relate to (1) the relevance of the two agreements to the countries of the OECS and (2) the implementation of the agreements;
- assesses the relevance of the two agreements to the members of the OECS;
- examines the key provisions of both agreements which will need to be implemented at the national or regional level;
- evaluates the legislative and other implications of implementation at the national level; and
- identifies issues which will require further consideration, including the implementation of the agreements at the international level.

The principal recommendation of the report is that a workshop should be held, as soon as practicable, to discuss the issue of implementation at the national, regional and international levels, and to prepare legislation for this purpose.

# 1 INTRODUCTION

Two recently concluded international agreements have considerable implications for the conservation and management of fish stocks at the global level and for the members of the Organisation of Eastern Caribbean States ("OECS").<sup>1</sup>

The agreements in question are:

(1) the **Agreement for the Implementation 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 1995 UN Fish Stocks Agreement") and;

(2) the **FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas** ("the FAO Compliance Agreement")<sup>2</sup>.

Following a request from the OECS to the FAO, a two person team consisting of Mr Horace Walters, international fisheries consultant, and Mr Stephen Hodgson, international legal consultant, undertook a two week mission to discuss the implications of the two agreements with OECS member States and to identify the legal and other needs regarding implementation.

## 1.1 The conduct of the mission

Following a briefing in Rome at FAO headquarters on Friday 23 August, Mr Hodgson travelled to Saint Lucia on Sunday 25 August 1996. Between 26 August and 7 September 1996 the mission visited all of the OECS member states with the exceptions of Anguilla and Montserrat.<sup>3</sup> An itinerary is attached at Annex A while a list of the persons contacted is attached at Annex B.

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<sup>1</sup> The current membership of the OECS comprises: Antigua & Barbuda, Dominica, Grenada, Montserrat, Saint Kitts & Nevis, Saint Lucia and Saint Vincent & the Grenadines. The British Virgin Islands and Anguilla are associate members.

<sup>2</sup> A number of shortened titles are to be found in use and in the literature. Hence the "UN Agreement", the "New York Agreement" and the "Straddling Stocks Agreement" for what in this report is called the "1995 UN Agreement on Fish Stocks". Similarly the "FAO Agreement" and the "Flagging Agreement" are used elsewhere for what in this report is called the FAO Compliance Agreement.

<sup>3</sup> Attempts were made to contact the fisheries officers of Anguilla and Montserrat by telephone from Antigua. Unfortunately these were not successful.

## 1.2 The contents of this report

This report is the report of the mission and contains proposals for discussion at a proposed workshop which it is anticipated will take place later in 1996 or in early 1997. Indeed the whole report can be seen as a preliminary discussion document.

One finding of the mission which could be flagged at the outset is that, with certain exceptions, those contacted, including fisheries officers, were less familiar with the two agreements than had been anticipated by the mission. This report therefore begins with a brief summary of the key provisions of the two agreements. The findings of the mission are set out in Section Three. Section Four contains a brief discussion of the relevance of the two agreements to the members of the OECS while the implications of implementing the agreements are set out in Section Five. Finally, recommendations are made in Section Six.

## 2 INTRODUCTION TO THE AGREEMENTS

### 2.1 Background

The background to the two agreements is the legal regime for the management of marine fishery resources contained in the United Nations Convention on the Law of the Sea (hereafter referred to as "the 1982 UN Convention"). Both agreements are framed in accordance with the 1982 UN Convention and seek to develop and strengthen its provisions.

Pursuant to the 1982 UN Convention each coastal State has sovereign rights over the marine living resources within its Exclusive Economic Zone ("EEZ"), which may extend up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured<sup>5</sup> and both the competence and the duty to take the necessary conservation and management measures in respect of those resources.<sup>6</sup> As regards the high seas, beyond the EEZ, the 1982 UN Convention largely reflects the customary law principle that States enjoy freedom of fishing.<sup>7</sup> This right of States is subject, *inter alia*, to a general duty to cooperate in the

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<sup>4</sup> All of the OECS members are parties to the 1982 UN Convention, except for Anguilla, the British Virgin Islands and Montserrat. These three are all dependent territories of the United Kingdom which has now indicated that it will accede to The 1982 UN Convention.

<sup>5</sup> The 1982 UN Convention, article 57.

<sup>6</sup> The 1982 UN Convention, article 61.

<sup>7</sup> The 1982 UN Convention, article 87.

conservation and management of high seas fish stocks and to enter into negotiations with a view agreeing any necessary conservation measures.<sup>8</sup>

Any such agreement will only, as a matter of international law, be binding on the States which are party to it. No State, or group of States, can unilaterally impose conservation measures in respect of high seas fish stocks on another State, nor on any vessel flying the flag of such a State.<sup>9</sup>

## 2.2 The 1995 UN Fish Stocks Agreement

The 1995 UN Fish Stocks Agreement is intended to give practical effect to the provisions of Articles 63 and 64 of the 1982 UN Convention which deal with straddling stocks and highly migratory species.

### 2.2.1 *The provisions on straddling stocks in the 1982 UN Convention*

Article 63 recognises the fact that conservation and management measures taken by a coastal State within its EEZ in respect of stocks which occur both (1) within its EEZ and the EEZ of a neighbouring coastal State (or States) and/or (2) within its EEZ and the adjacent high seas, are likely to be rendered ineffective unless equivalent conservation and management measures are taken in respect of the same stocks either within the neighbouring EEZ (or EEZs) or on the adjacent high seas.

Regarding scenario (1), the 1982 UN Convention requires the coastal States involved to agree on the necessary measures for the conservation and development of such stocks. In respect of scenario (2) the coastal State and States fishing for such “straddling stocks” on the high seas are under a duty to seek to agree on the necessary conservation measures to be applied on the high seas.

### 2.2.2 *The provisions on highly migratory species in the 1982 UN Convention*

As regards highly migratory species, it is equally evident that conservation and management measures taken by a coastal State within its EEZ while such stocks migrate through it, will be rendered ineffective if equivalent measures are not taken along the length of the migratory path of those species: both on the high seas and within the EEZs of other coastal States.

Consequently Article 64 of the 1982 UN Convention imposes a duty on coastal States and States which fish for specified highly migratory species<sup>10</sup> to cooperate, either directly or

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<sup>8</sup> The 1982 UN Convention, articles 116, 117 and 118.

<sup>9</sup> Bering Sea Fur Seals Fisheries Arbitration (Great Britain v. United States), *Moore's International Arbitrations*, 755 (1893) and article 92 of the 1982 UN Convention.

<sup>10</sup> The species are listed in Appendix 1 of the 1982 UN Convention, which is reproduced at Annex D.

through appropriate international organisations, to ensure the conservation and management of such species.

### ***2.2.3 The 1995 UN Fish Stocks Agreement in outline***

The objective of the 1995 UN Fish Stocks Agreement is to create a detailed framework for the management of straddling fish stocks which “straddle” the boundary between the EEZ and the high seas (scenario 2, above) and highly migratory fish stocks<sup>11</sup>, both on the high seas and within areas under national jurisdiction.

To this end it:

- sets out relatively detailed principles, including the precautionary principle, for the conservation and management of straddling fish stocks and highly migratory fish stocks which are to be applied both on the high seas and within the EEZ;
- requires coastal States and States which fish for straddling fish stocks and highly migratory fish stocks on the high seas to cooperate to ensure that “compatible” measures are taken in respect of the conservation and management of such stocks on the high seas and within the EEZ;
- encourages the creation of subregional or regional management organisations or arrangements to establish conservation and management measures on the high seas for straddling fish stocks or highly migratory fish stocks. Parties are under a duty to join such organisations or arrangements or to agree to comply with the conservation and management measures which they establish. Parties which fail to do so will not be permitted access to the stocks to which those measures apply;
- contains detailed rules on the establishment and operation of subregional or regional management organisations or arrangements;
- specifies various detailed duties to which States are subject in respect of vessels which fly their flag and which fish on the high seas;
- contains novel provisions on enforcement by non-flag States;
- introduces a new concept of port-State jurisdiction in respect of fishing vessels;
- contains a section on the requirements of developing States; and
- contains detailed provisions on dispute resolution.

## **2.3 The FAO Compliance Agreement**

The FAO Compliance Agreement is concerned with the activities of vessels fishing on the high seas.

As already stated, agreements to regulate high seas fishing bind only the States which are party to them. While a number of such agreements have been concluded to date, their

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<sup>11</sup> The agreement applies expressly to species of “fish”. It is arguable therefore that it does not apply to the species of cetaceans which are also listed in Appendix 1 of the 1982 UN Convention. On the other hand, Article 5 (e) refers to adopting conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, while Article 5 (g) refers to protecting biodiversity in the marine environment.

effectiveness has been diminished by the practice of “re-flagging”. Owners or operators who wish to avoid the effects of any conservation and management measures agreed to by the flag State of their vessel have simply re-registered the vessel under the flag of a State which is not party to any such agreement.

Not only does this practice weaken the effectiveness of existing international agreements but it may also have the effect of deterring States from entering into future agreements, as their vessels which do not “re-flag” will be put at a short-term disadvantage in comparison with vessels which do. This may be seen as a classic example of the “tragedy of the commons”.

### ***2.3.1 The FAO Compliance Agreement in outline***

The FAO Compliance Agreement seeks to reinforce the effectiveness of international fisheries agreements in three main ways.

- State Parties are required to take increased responsibility for the activities of their high seas fishing vessels by positively authorising them to fish on the high seas and then only where they are able to exert effective control over them so as to ensure that they do not undermine the effectiveness of international conservation and management measures. Vessels must be adequately marked and must provide sufficient information concerning their operations. There is, however, provision for States to exempt vessels of under 24 metres in length from the requirement to obtain authorization to fish on the high seas, provided that measures are taken to ensure that they do not undermine the effectiveness of international conservation and management measures.
- Parties are required to provide FAO, on a “real time” basis, with information concerning the activities of the vessels which they have authorised to fish on the high seas, which FAO, in turn, is under a duty to circulate. This is to enable the Parties to have an up to date and accurate picture of high seas fishing activities so that they may have confidence that international conservation and management agreements are being complied with.
- Through the inclusion of provisions creating duties of international cooperation regarding the sharing of information.

## **2.4 The status of the agreements**

Neither agreement is yet in force. The 1995 UN Fish Stocks Agreement was adopted on 4 August 1995 by the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks and was opened for signature on 4 December 1995. It requires 30 ratifications or accessions to enter into force. To date it has been signed by 47 States<sup>12</sup>, but has been ratified by only three: Saint Lucia, Tonga and the United States of America.

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<sup>12</sup> Including, in the wider region, Brazil, Belize, Canada, the European Union, Jamaica and the Netherlands.

On 4 December 1995, the United Kingdom signed the Agreement on behalf of the British Virgin Islands. Subsequently the UN was informed that the Agreement would also apply to Anguilla but no mention was made of Montserrat.

The FAO Compliance Agreement was approved at the Twenty-seventh Session of the FAO Conference on 24 November 1993 and will enter into force following its acceptance by 25 States<sup>13</sup>.

To date it has been accepted by nine States, including Saint Kitts and Nevis, Canada, the United States of America and also by the European Union.

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<sup>13</sup> As the FAO Compliance Agreement was negotiated under the auspices of the FAO Constitution, Article XIV, the procedure for its entry into force is slightly different. Acceptance is broadly equivalent to ratification.

### 3 FINDINGS

In this section the findings of the mission are briefly set out. These establish the necessary background to an understanding of (1) the relevance of the agreements to the OECS countries and (2) the implications of implementation, which are addressed in the following sections.

#### 3.1 Familiarity with the agreements

With certain exceptions, the persons contacted were not yet particularly familiar with the two agreements. This may be because the countries of the OECS were not directly involved in the negotiation of the agreements (although some members may have participated in some of the sessions). Most of the fisheries departments did not have copies of the agreements and so these were provided by the mission. The contents of the two agreements were outlined to the fisheries staff and the implications for possible implementation were discussed in as much detail as possible.

One important exception was the British Virgin Islands which had already prepared draft legislation<sup>14</sup>.

#### 3.2 Maritime boundaries

All of the OECS member countries have declared 200 nautical mile EEZs with the exception of the British Virgin Islands, Anguilla and Montserrat which have declared 200 mile Exclusive Fishing Zones.<sup>15</sup>

The process of boundary delimitation is proceeding. The OECS Central Secretariat has established a Maritime Boundary Coordinating Committee, while all of the member States (but not the dependent territories) have set up their own boundary committees and have prepared action plans. There are 31 individual maritime boundaries within the OECS which require, or will require, agreements to be produced.<sup>16</sup> So far seven agreements have been reached out of which five treaties are presently in force.

Not all of the OECS members have EEZs (or equivalent fishing zones) which border the high seas. For example the EEZs of Saint Lucia, Saint Vincent & the Grenadines and Grenada do not extend to 200 nautical miles and are separated from the high seas to the East and to the West by the EEZs of Barbados, Trinidad and Tobago and Venezuela. Similarly the EEZs of Saint Kitts and Nevis and Montserrat are separated from the high seas by the EEZs of other countries.

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<sup>14</sup> Based on guidelines prepared by FAO for the implementation of the FAO Compliance Agreement.

<sup>15</sup> The term EEZ will be used throughout as for the purposes of this report little depends on the distinction. See Annex E for the relevant legislation.

<sup>16</sup> Briefing note prepared by G. Holden, OECS.

Only the British Virgin Islands, Anguilla, Antigua & Barbuda and Dominica have EEZs (or equivalent fishing zones) which extend to nautical 200 miles, out into the Atlantic. It follows that straddling stocks of the type considered in the 1995 UN Fish Stocks Agreement (ie stocks which straddle the EEZ and the high seas) could only exist, as a matter of law, in the EEZs of these four OECS members and not in the EEZs of the other five.

### 3.3 Fishing activity within the OECS

None of the OECS members has a home-based high seas fishing fleet and none of the fisheries officers consulted were aware of any locally based vessels currently fishing on the high seas or with any plans to do so. In certain OECS countries the fishing effort is still largely focussed on reef and inshore fisheries; only now are efforts being made to target pelagic stocks.

While the situation varies from one country to another, it appears that the largest fishing vessels used are only around 45 ft long and that there are no more than a dozen of them. Such vessels do not venture more than about 90 miles off shore at present.

### 3.4 The registration of vessels within the OECS

A number of the OECS members operate an open shipping registry. These include Antigua & Barbuda, Dominica and Saint Vincent & the Grenadines.

While merchant shipping with an aggregate gross tonnage of around 1.85 million is registered under the Antigua and Barbuda Merchant Shipping Act of 1985<sup>17</sup>, the Government has a policy of not registering foreign based fishing vessels. This is because it is perceived that registering such vessels might cause problems for Antigua and Barbuda as a flag State.<sup>18</sup>

Saint Vincent and the Grenadines, which in December 1995 had merchant ships of an aggregate gross tonnage of 6 184 878 registered under the Merchant Shipping Act of 1982, does, however, have foreign based fishing vessels on its register. According to *Lloyd's Register : World Fleet Statistics 1995* there are 57 "fish catching" vessels registered under the Saint Vincent Flag with an aggregate gross tonnage of 52 903. The fisheries department has no information on these vessels.

Dominica also operates an open register, but has a far smaller gross tonnage of vessels registered. This may be because unlike Saint Vincent, which has a Deputy-Commissioner

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<sup>17</sup> Source: *Lloyds' Register: World Fleet Statistics* (1995).

<sup>18</sup> This policy also applies to the registration of oil tankers for the same reason. According to *Lloyds' Register* op cit. Antigua & Barbuda has only one fishing vessel of over 100 GT although it does not appear that is presently used for fishing.

for Maritime Affairs based abroad (with offices in Geneva and Monte Carlo), all vessel registration takes place in Dominica.<sup>19</sup>

Vessel registration under the merchant shipping acts is separate to the issue of the registration of local fishing vessels under certain of the fisheries acts of OECS members.<sup>20</sup> Its significance, in the context of this report, lies in the fact that in the case of open registries it can permit the "re-flagging" of foreign based vessels to avoid the constraints of international fisheries agreements or arrangements.

### 3.5 Fish stocks in OECS waters

As none of the OECS members with an EEZ which borders the high seas presently fishes far enough offshore there is insufficient information to be able to state categorically that there are no straddling fish stocks of the type addressed by the 1995 UN Fish Stocks Agreement. It does not, however, appear so.

On the other hand many of the highly migratory fish species listed on Appendix I of the 1982 UN Convention are thought to migrate through the EEZs of OECS members.<sup>21</sup> One difficulty in this regard is that at present only Grenada and Saint Vincent are targeting the larger tuna species using long lines. Elsewhere in the OECS fishing for pelagic stocks takes place closer inshore and therefore tends to be for the smaller species and consequently data in respect of the larger tuna species is less complete.

Equally, and for the same reason, there is a lack of full information on the migratory patterns of these stocks. For the purposes of this report it is sufficient to note that there appear to be two distinct migrations. One is from the South under which fish from the waters of Venezuela, Trinidad & Tobago and Barbados pass through the waters of Windward Islands before turning out into the Atlantic at around the level of Antigua & Barbuda.<sup>22</sup> The other migratory path appears to enter the Leeward Islands from the Atlantic from the direction of the North American coast before turning back out into the Atlantic

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<sup>19</sup> According to *Lloyds Register* there are presently only two fishing vessels registered - but it is understood that neither is presently used for fishing.

<sup>20</sup> For example provisions on the registration of fishing vessels are contained in the Fisheries Act of Saint Kitts & Nevis and similar provisions are proposed for certain other States.

<sup>21</sup> The large pelagic species identified so far by the CARICOM Fisheries Resources, Assessment and Management Programme (CFRAMP) Pelagic and Reef Fishes Resource Assessment and Management Programme as being among the most commercially important are Albacore tuna (*Thunnus alalunga*), Bigeye tuna (*Thunnus obesus*), Blackfin tuna (*Thunnus atlanticus*), Dolphin (*Coryphaena hippurus*), Sail fish (*Istiophorus albicans*), Skipjack tuna (*Katsuwonus pelamis*), Swordfish (*Xiphias gladius*), Yellowfin tuna (*Thunnus albacares*) Crevalle jack (*Caranx hippos*), Kingfish (*Scomberomorus cavalla*) and Wahoo (*Acanthyocybium solandri*). All except the last three are highly migratory fish stocks pursuant to the 1995 UN Fish Stocks Agreement. Source: Murray, P.A. & Fabres, B., "The Assessment & Management of Fisheries Resources in the Eastern Caribbean - Moving Boundaries and Delimitation", 1996. (unpublished paper)

<sup>22</sup> However it is thought that Dolphin fish, which are classed as a highly migratory fish stock, do not leave the EEZs of the island chain. Murray & Fabres, op cit.

A major regional data collection programme is currently being undertaken by the CARICOM Fisheries Resources Assessment and Management Programme ("CFRAMP") Pelagic and Reef Fishes Resource Assessment and Management Programme in conjunction with the OECS Natural Resources Management Unit and this should contribute towards the creation of a better knowledge of both stock composition and migratory patterns.

### **3.6 Fisheries legislation in the OECS**

Following earlier OECS projects, with the assistance of FAO, a set of harmonized model fisheries legislation (comprising a fisheries act and regulations) was prepared in the 1980s. A subsequent review mission in 1991 noted the need for certain amendments; and following a workshop under the FAO/Norway Government Cooperative Programme the OECS circulated a revised model draft law in 1993 containing those amendments.

As regards implementation, the OECS members can be divided into three broad categories.

First, there are the countries which are still in the process of putting the harmonized legislation into place. These include Dominica, where the regulations are being finalised, and the British Virgin Islands where a fisheries bill is shortly due to go before the Executive Council.

Secondly, there are the countries which have recently completed the introduction of the legislation. They are now at the stage of implementation where the effectiveness and suitability of the legislation can be put to the test in practice. Examples include Grenada and Saint Kitts & Nevis which have recently issued regulations under their fisheries acts.

Finally, there are the countries which have now had an opportunity to operate their fisheries legislation and are considering the need for amendments and revision in the light of their own particular circumstances and based on the practical experience of the fisheries departments and enforcement agencies. Countries in this category include Antigua & Barbuda and Saint Lucia.

Finally it is worth noting that the harmonized fisheries legislation applies to the "fishing waters" of each country, in other words to the internal waters, territorial sea and EEZ. The references in the fisheries acts to the high seas concern the powers of authorized officers in connection with national fishing vessels and a right of "hot pursuit" in respect of foreign vessels but in connection with their actions within the "fishing waters".<sup>23</sup>

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<sup>23</sup> The relevant legislation is listed in Annex E.

### **3.7 The Common Surveillance Zone**

The agreement between the OECS members, apart from Anguilla, establishing the Common Fisheries Surveillance Zones was concluded on 1 February 1991.<sup>24</sup> It provides for the creation of four surveillance zones - due to the presence of non-OECS States in the island chain<sup>25</sup>.

A lack of funding at the regional level has tended to slow down common exercises. This programme is under active consideration for re-introduction.

### **3.8 Fisheries management in the OECS**

The fisheries departments of the OECS countries have been working at the national level to promote management of species of major economic importance. Examples of management measures which have been adopted include gear regulation, the designation of closed seasons, the creation of fishing priority areas and the imposition of size limits on catch.

With assistance from CFRAMP, States have instituted biological sampling of species to develop a data base on length-frequency, age at maturity, sex, etc. Such sampling has been instituted to develop a data base on stocks such as tuna, dolphin and kingfish. There are harmonised regional management measures for lobsters and conch but these have yet to be developed for the pelagic species including the highly migratory species.

### **3.9 The Common Fisheries Zone**

Negotiations are continuing over the creation of a common fisheries zone comprising the EEZs of Saint Lucia, Saint Vincent & the Grenadines and Grenada. However the issue of inter-State compensation still needs to be discussed and finalized.

### **3.10 Responsibility for fisheries within the OECS**

The OECS Fisheries Unit has been subsumed into the National Resources Management Unit ("NRMU"). The Fisheries officers consulted continue to see a fisheries role for the expanded NRMU particularly at this time when new fisheries initiatives have been identified as they relate to the two agreements and fisheries management in a regional context.

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<sup>24</sup> The copy obtained by the mission is not actually signed on behalf of the British Virgin Islands, although it is understood that the latter is a member.

<sup>25</sup> The four zones comprise (1) the EFZ of the British Virgin Islands; (2) the EEZs/EFZ Antigua & Barbuda, Saint Kitts & Nevis and Montserrat; (3) the EEZ of Dominica and (4) the EEZs of Saint Lucia, Saint Vincent & the Grenadines and Grenada. If Anguilla were to become a party to the Agreement, the inclusion of its EFZ would appear to link zones (1) and (2).

## 4 THE RELEVANCE OF THE TWO AGREEMENTS TO THE MEMBERS OF THE OECS

On the basis of the matters discussed in the previous sections, the relevance of the 1995 UN Fish Stocks Agreement and the FAO Compliance Agreement to the OECS member countries could be questioned, given that:

- both agreements are primarily directed at fishing activities on the high seas;
- none of the OECS members operate home based high seas fishing vessels;
- there do not appear to be any straddling stocks in the EEZs of OECS members and in any event such stocks, if they exist, are not currently targeted.

On closer examination, however, it becomes clear that the two agreements are directly relevant to the members of the OECS for a number reasons.

- As island nations with important fisheries resources the OECS members have traditionally taken a strong interest in issues relating to the international law of the sea. If the two agreements are not implemented then a collapse in high seas fish stocks seems inevitable in due course. As responsible members of the international community the OECS members have an important role to play in seeking to prevent this.
- A number of OECS members do presently operate open shipping registers. A decision needs to be taken at a high level by those States as to whether the benefits to them of registering foreign operated high seas fishing vessels outweighs the harm such vessels might cause, including potential harm to the livelihoods of locally-based fishermen, if they are not effectively regulated.<sup>26</sup>
- The fact that OECS do not at present have home based high seas fishing fleets does not mean that such fleets will not be developed in the future. For example the Fisheries Department in Grenada, where there is already experience of fishing further offshore, intends to propose that the development of a high seas fishing capacity should become government policy. If the agreements are not implemented there is a risk that by the time OECS members launch their high seas fishing fleets it could be too late.
- Effective implementation of the 1995 UN Fish Stocks Agreement at the regional level is the only realistic way of ensuring that the highly migratory fish stocks which currently pass through the OECS region are conserved and managed along the length of their migratory paths. The harvesting of these stocks already plays an important economic role in the OECS countries, as well as satisfying important nutritional needs. In addition there is the potential to add considerable value to the catches of

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<sup>26</sup> In fact a complete failure to regulate the activities of fishing vessels on the high seas arguably constitutes a breach of the duty under article 117 The 1982 UN Convention, which provides that: "All States have the duty to take, or cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas".

these fish, through the development of exports and processing. According to the International Commission for the Conservation of Atlantic Tuna ("ICCAT") the major stocks of yellowfin tuna, skipjack tuna and albacore are all fully exploited while stocks of bluefin tuna, swordfish, blue marlin and white marlin are over-exploited.<sup>27</sup> If fishing for these species is not regulated on the high seas then stock collapses could occur with clear implications for the fisheries of OECS members.

- Equally, as the 1995 UN Fish Stocks Agreement requires States to seek to ensure compatibility between conservation and management measures to be applied on the high seas and within the EEZ, the establishment of an appropriate regional management mechanism would give the OECS members some opportunity of influencing the management of the highly migratory fish stocks within the EEZs of neighbouring states (in respect of which some concerns have been voiced) as well leading to the provision of information about these fisheries.

For these reasons while it would appear that adherence to both agreements would *prima facie* be in the interests of the members of the OECS, it is necessary to first consider in more detail what the burdens of this might be, in other words the implications of implementation. This is the subject of the next section.

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<sup>27</sup> ICCAT 1994 Biennial Report, cited in the Review of the State of World Fishery Resources, FAO Fisheries Circular No. 884, (1995).

## 5 THE IMPLICATIONS OF IMPLEMENTING THE TWO AGREEMENTS

Implementation of the two agreements by the OECS members would take place on a number of levels and in a number of forms.

At the national level, in respect of both agreements, each country would require either new legislation or amendments to existing legislation to regulate fishing on the high seas. There would also be a need to establish the necessary administrative systems to operate the various vessel authorization, registration and data management schemes which the legislation would have to provide for, although pending the creation of home based high seas fishing fleets, the actual administrative burden would be relatively light. In respect of the 1995 UN Fish Stocks Agreement, but not the FAO Compliance Agreement, there would be fisheries data collection and analysis requirements. In addition there would be implications for fisheries management, although pending the implementation of the 1995 UN Fish Stocks Agreement at the international level, through the creation of subregional or regional fisheries management organisations or arrangements, it is hard to say with any certainty, at this stage, what those might be.

At the international level the FAO Compliance Agreement is, relatively speaking, complete. Once it enters into force there will be no need for subsidiary agreements at international level for the scheme and mechanism envisaged by the agreement to function. As far as the OECS members are concerned, the 1995 UN Fish Stocks Agreement could only be said to be fully implemented at the international level once an appropriate subregional or regional management organisation, with competence to establish conservation and management measures for the highly migratory fish stocks which pass through its waters, is established.

Finally, there could also be an important role for the OECS in the implementation of the two agreements, for example through the creation of common mechanisms to ensure compliance.

In this section the primary focus is on identifying the legal and other needs to be addressed in connection with implementation at the national level. In order to assess these it is necessary to examine certain provisions of each agreement in some detail, although this section does not purport to be a review of all of the provisions of the agreements (for example the articles concerned with dispute resolution are not considered). However the issues of international level and OECS regional level implementation are also briefly considered. As the implementation of the FAO Compliance Agreement would take place almost entirely at the national level, it is considered first.

## 5.1 The FAO Compliance Agreement

### 5.1.1 Key provisions relevant to implementation

#### 5.1.1.1 Application

The FAO Compliance Agreement applies to “all vessels that are used or intended for fishing on the high seas”<sup>28</sup>. However, as already mentioned, State Parties can exempt vessels which are less than 24 metres in length from the full effects of the Agreement and impose on them a less strict regime.<sup>29</sup> While the OECS members could avail themselves of this exemption in implementing the FAO Compliance Agreement, this is not recommended because no such exemption is contained in the equivalent provisions of the 1995 UN Fish Stocks Agreement. If, and when, an OECS high seas fleet is developed the vessels will most likely be fishing for highly migratory fish stocks and so will be subject to the regime created under the 1995 UN Fish Stocks Agreement.

#### 5.1.1.2 Flag State responsibility

The basic principle of flag state responsibility is set out in Article III (1)(a) which provides as follows:

“Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermine the effectiveness of international conservation and management measures.”

“International conservation and management measures” are defined in Article I as follows:

“International conservation and management measures” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in ...[the 1982 UN Convention]. Such measures may be adopted either by global, regional or subregional fisheries organisations, subject to the rights and obligations of their members, or by treaties or other international agreements.”

#### 5.1.1.3 Requirement that vessels be authorized to fish on the high seas

This requirement for vessel authorization is contained in Article III (2) which states that:

“... no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.”

To satisfy this requirement the OECS member countries would need new legislative provisions to set up the necessary schemes to authorize high seas fishing. As already mentioned the existing harmonized fisheries laws apply only to the “fishery waters” which are defined as the waters of the EEZ, territorial waters and internal waters. Therefore

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<sup>28</sup> Article II (1).

<sup>29</sup> Article III (2). They would still have to take effective measures in respect of such vessels to ensure that any they do not undermine the effectiveness of international conservation and management measures.

simply amending the existing fisheries acts to include a new category of licence, a “high seas licence” (for example), would not suffice; more substantial redrafting of the fisheries acts would be needed.

Once the legislation was in place the administrative burdens of implementation should be minimal for those States without high seas fishing fleets. All the OECS members currently licence fishing vessels and have experience of the operation of licensing systems.

#### **5.1.1.4 Conditions for the grant of such an authorization**

An authorization to fish on the high seas may only be granted by a State where it can ensure effective control over the vessel in question. Article III (3) states:

“No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless that Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.”

A key concept in this paragraph is that of the “link” between the vessel and the flag State.

Where a vessel operates out of a port in the flag State and lands its catch there, the inclusion of conditions in the authorization combined with inspections of the vessel, gear and log book should provide a sufficient opportunity to enable the flag State to exercise its responsibilities under the FAO Compliance Agreement.

It will become more difficult, and costly, for a State to effectively exercise its responsibilities under the FAO Compliance Agreement where a high seas vessel flying its flag operates out of another State and lands its catch there even if its crew and beneficial owners have a genuine link with the flag State, for example where they are nationals of the flag State. Where a vessel has no substantial economic or physical links with the flag State, other than the fact of registration, then it could become costly and difficult to monitor the activities of such a vessel to ensure that it does not undermine the effectiveness of international conservation and management measures. Short of deregistering the vessel, it might be difficult to ensure compliance by a vessel with the terms of its authorization.

In circumstances where the vessel is not landing its catch in the flag State or otherwise contributing to the flag State’s economy, except through registration fees, the costs of such measures would almost certainly outweigh any benefits from registering the vessel.

#### **5.1.1.5 Re-flagging of vessels which have previously undermined the effectiveness of international conservation and management measures**

Article III (5) requires State Parties not to register vessels previously registered under the flag of another Party and which have undermined the effectiveness of international conservation and management measures. An exception to this principle is where there has been a *bona fide* change in the ownership of the vessel. In addition a Party can re-register

such a vessel where, in all the circumstances, it is satisfied that to do so would not undermine international conservation and management measures.

This article should not place too significant a burden on OECS States. The reporting requirements of the Agreement and the “real time” register to be kept by FAO will mean that it should be relatively simple and cheap to ascertain whether a vessel seeking re-registration has previously undermined the effectiveness of international conservation and management measures. Where a vessel has previously been registered under the flag of a non-Party to the FAO Compliance Agreement, the obligation not to re-register depends on the Party having actual notice of the relevant circumstances in which any authorization to fish was suspended or withdrawn.

Again provisions would have to be contained in legislation in order to implement this obligation at the national level.

#### **5.1.1.6 Vessel marking, the provision of information by the vessel and enforcement measures**

The remaining paragraphs of Article III all require some form of legislation and the implementation of that legislation but otherwise, generally, should not be particularly onerous.

- a. Vessels must be marked in a “way that they can be easily identified in accordance with generally accepted standards”. The FAO Standard Specifications for the Marking and Identification of Fishing Vessels is cited as an appropriate example.<sup>30</sup>
- b. Authorized vessels must be required to provide information on their fishing operations so as to allow the State Party to fulfil its obligations under the Agreement. This could be achieved by making the provision of such information a condition of the authorization
- c. State Parties must take enforcement measures against contraventions of the FAO Compliance Agreement including making them offences under national legislation. Sanctions must be of sufficient gravity to be effective in securing compliance and to deprive offenders of the benefits of illegal activities. The existing maximum level of fine in some OECS fisheries acts of EC\$5,000 for contraventions by local fishing vessels would not be sufficient.

#### **5.1.1.7 Record of authorized high seas fishing vessels**

Article IV requires each Party to maintain a record of the high seas vessels entitled to fly its flag which are authorized to fish on the high seas. While such a record could, in theory, be maintained without legislation, it would be preferable to make the maintenance of such a

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<sup>30</sup> The OECS harmonized draft fisheries regulations, prepared in 1993, actually recommended these vessel marking specifications for national vessels.

record a legal requirement. Again for those countries without a high seas fishing fleet the maintenance of such a record would be relatively simple.

#### **5.1.1.8 International cooperation**

Article V contains a number of provisions on international cooperation and requires States to provide information to assist Flag States to identify those, if any, of their vessels which may have engaged in activities undermining international conservation and management measures. In addition, where a Port State has reason to suspect that a foreign high seas fishing vessel, voluntarily in its port, has engaged in such activities, it is under a duty to notify the Flag State. The Article goes on to provide that, "Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions" of the Agreement. This would require legislative provision to permit authorized officers to undertake investigatory measures in respect of such foreign high seas vessels when so requested by the Flag State.

#### **5.1.1.9 Exchange of information**

Article VI contains detailed provisions on the amount and types of information to be provided to FAO which, as described above, will act as the central information "clearing house" under the FAO Compliance Agreement. Although the article is around one and a half pages long, the information should all be readily available from the record required under Article IV and the operation of the authorization scheme in Article III and from international cooperation provisions in Article V.

### **5.1.2 Evaluation**

The implications of implementing the FAO Compliance Agreement would appear to be relatively limited for most of the members of the OECS.

Apart from a need for new legislative provisions in all cases, and the form of such legislation is an issue which is dealt with below, pending the creation of high seas fishing fleets the administrative and monitoring burdens on OECS members would appear to be quite limited. Yet as soon as the FAO Compliance Agreement comes into force the OECS members would automatically receive information on the high seas fishing activities of other Parties. If, and when, vessels start to fish on the high seas the administrative burden will increase although it should in principle be possible to largely offset costs through charging appropriate fees for the issuing of high seas fishing authorizations. These are issues to be discussed further at the proposed workshop.

However for the countries which operate an open shipping register, and in particular those countries such as Saint Vincent & the Grenadines which presently have foreign owned and operated fishing vessels on their register, the implementation of the FAO Compliance Agreement would raise a number of issues. If Saint Vincent & the Grenadines adheres to the FAO Compliance Agreement then it appears that it could be relatively expensive and difficult for the Government to fulfil its obligations in respect of the activities of such vessels

on the high seas. In short, and taking into account the importance of the aims and objectives of the Agreement, a policy decision would need to be made in respect of such vessels as to whether the benefit of continuing to register them would be outweighed by the burden of administration and of monitoring.

If a decision were to be made to cease having such vessels on its register Saint Vincent & the Grenadines could simply pass the legislation necessary to implement the FAO Compliance Agreement and then refuse to grant licenses to any high seas fishing vessel for the time being. The likelihood is that such vessels would re-register elsewhere but they could be struck off the register in due course if they were to continue to fish without the necessary authorization.<sup>31</sup>

## 5.2 The 1995 UN Fish Stocks Agreement

### 5.2.1 *Key provisions relevant to implementation at the national level*

#### 5.2.1.1 Application of the Agreement

The 1995 UN Fish Stocks Agreement applies, “unless otherwise provided”, to the conservation and management of straddling fish stocks and highly migratory fish stocks “beyond areas under national jurisdiction”.<sup>32</sup> However Articles 5, 6 and 7 also expressly apply within the EEZ. Apart from those three articles there are a number of issues to be addressed at the national level in connection with implementation.

#### 5.2.1.2 General principles for the management of straddling fish stocks and highly migratory fish stocks

Article 5 sets out a number of general principles for the management of straddling fish stocks and highly migratory fish stocks both on the high seas and within the EEZ. The application of these principles within the EEZ is dealt with in Article 3 (2). This provides that:

“In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in Article 5.”

The principles enumerated in Article 5 require the Parties to the Agreement to:

- “a adopt measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

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<sup>31</sup> This power is granted by section 59(1) of the Merchant Shipping Act 1982. This section provides “ The Minister may, in the National interest or in the interest of shipping in Saint Vincent and after giving the owner of the ship concerned a minimum period of ninety days to make representations, by order, direct that the Registration of any ship be closed.”

<sup>32</sup> Article 3.

- b ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the specific requirements of developing countries, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
- c apply the precautionary principle in accordance with Article 6;
- d assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- e adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- f minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species through measures including, to the extent practicable, the development and use of selective environmentally safe and cost effective fishing gear and techniques;
- g protect the biodiversity of the marine environment;
- h take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- i take account of the interests of artisanal and subsistence fishers;
- j collect and share, in a timely manner, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;
- k promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- l implement and enforce conservation and management measures through effective monitoring, control and surveillance.”

Leaving aside, for the moment, paragraphs (c) and (j) (on the precautionary principle and on information requirements, respectively), the detail and scope of these principles represent a significant development of the provisions contained in Article 61 of the 1982 UN Convention relating to the conservation of living marine resources within the EEZ.

The provisions of this article will require more detailed consideration and discussion at the proposed workshop. It does not appear, however, that it would be particularly difficult for the OECS members to apply these principles in the management of the highly migratory fish stocks within their waters. A question could arise over paragraph (l) in that there are at present no management measures in place in respect of these stocks and some concern has been voiced over the adequacy of funding for monitoring and surveillance. This may also be an area for increased OECS cooperation through the continued development of the Common Surveillance Zones.

There would be no need for further national legislation in order to implement these provisions. The fisheries acts of the OECS members already confer sufficient general powers on the Minister responsible for fisheries to establish conservation and management measures of the type envisaged in Article 5.

d. For example section 39 of the Fisheries Act of Saint Lucia provides as follows:

- “39. (1) The Minister may make regulations generally for the management and development of fisheries in the fishery waters.
- (2) In particular, without limiting the generality of subsection (1), the Minister may make regulations for all or any of the following purposes:-
- (a) providing for the licensing, regulation and management of any particular fishery;
  - (b) prescribing fisheries management and conservation measures, including prescribed mesh sizes, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods of fishing or fishing gear and schemes for limiting entry into all or any specified fisheries;
  - ...
  - (t) prescribing any other matter which is required or authorized to be prescribed.”

This type of provision, and there are similarly worded provisions in the fisheries legislation of all OECS member countries, clearly establishes the necessary power to establish conservation and management measures for fisheries within the EEZ (and internal waters) in respect of straddling fish stocks (such as there may be) and highly migratory fish stocks.

One issue which could be better addressed by the current fisheries legislation is the policy framework under which fisheries management is to be carried out. Again taking Saint Lucia as an example, Section 3 of the Fisheries Act merely provides as follows -

- “(1) The Minister shall take such measures as he thinks fit under this Act to promote the management and development of fisheries, so as to ensure the optimum utilization of the fisheries resources in the fishery waters for the benefit of Saint Lucia.”

The fisheries legislation could be revised so as include principles to be applied in the management of fish stocks as a whole. More specifically a new section could be inserted setting out the matters to which the Minister is to have regard in formulating fisheries management and development measures. These could include:

- the precautionary principle;
- the principle of inter-generational equity in that fisheries resources should be managed and developed for the benefit of present and future generations;
- the utilization of fisheries resources to achieve economic growth and human development;
- the preservation of marine biodiversity;
- the minimisation of pollution, bycatch etc.

The contents of such a section, which would require careful drafting, could be discussed at the proposed workshop. This type of provision would clearly set out the parameters within which the Minister would be entitled to exercise his/her discretion and could be a useful mechanism for ensuring that principles and guidelines established at the international level are taken into account at the national level.

However, as long as regard is had to these principles in the formulation of national policy, there is no concrete need to amend national legislation. A further point to emphasize is that any such amendments would be to the existing fisheries acts as they regulate fishing in the "fishery waters" of each state rather than to any separate legislation to regulate fishing on the high seas.

### **5.2.1.3 The precautionary principle**

Paragraph (c) of Article 5 requires Parties to the 1995 UN Fish Stocks Agreement to apply the precautionary principle in accordance with Article 6 which sets out the principle in some detail in conjunction with guidelines in its Annex II. In particular Parties are required to determine stock specific reference points and the actions to be taken if they are exceeded. Again, and subject to the comments in the previous paragraph, legislation would not be required to implement these provisions.

### **5.2.1.4 The collection and sharing of information**

The requirements of Article 5(j) concerning the collection and sharing of information are in more concrete form than the equivalent provision in the 1982 UN Convention which simply requires "available" scientific information, catch and fishing effort statistics etc to be exchanged.<sup>33</sup>

The standard requirements for the collection and sharing of data are set out in Annex I in some detail. The minimum information to be collected on fisheries activities is set out in Article 3 of Annex I and is as follows:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight, or both, by species (both target and non target) as is appropriate to each fishery. [...].
- (c) discard statistics appropriate to each fishing method;
- (d) fishing location, date and time fished and other statistics on fishing operations as appropriate."

This information, to be provided to the relevant subregional or regional fisheries management organisation or arrangement, must be "in sufficient detail to facilitate effective stock assessment and in accordance with agreed procedures". In other words there is a quality benchmark.

On the basis of discussions with fisheries officers it appears that it would not be particularly difficult for the OECS members to provide such information. Nevertheless those involved should carefully consider the contents of Annex I of the 1995 UN Fish Stocks Agreement as this is a matter which will require further consideration and may warrant further discussion at the proposed workshop. The Annex contains additional provisions on vessel data and information which will become more relevant should high seas fleets be developed.

While the collection of such data is an essential component of fisheries management, the mission was rather concerned to learn from a number of fisheries departments that budgetary

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<sup>33</sup> Article 61 (5).

pressure is being cited as a reason to limit the recruitment, or engagement, of data collectors and to generally down play the importance of their role. It should be stressed that if OECS members do become party to the 1995 UN Fish Stocks Agreement the collection and exchange of such information will be an obligation under international law.

It may also be appropriate to consider a role for the OECS in the collation of this information - both to encourage regional management and to serve as the focal point to interact with any regional organisation/agreement.

Finally, while some States may view an obligation to give such information about resources within their EEZs with disfavour it should not be forgotten that neighbouring State parties to the Agreement who have refused to share information in the past would have to give the same information to the appropriate regional or subregional management organisation or agreement.

#### **5.2.1.5 Compatibility of conservation and harmonization measures**

Article 7 of the Agreement provides, *inter alia*, that conservation and management measures adopted for the high seas and areas under national jurisdiction in respect of straddling fish stocks and highly migratory fish stocks must be compatible. To that end coastal States and States fishing on the high seas have a “duty to cooperate for the purpose of achieving compatible measures in respect of such stocks”. This makes sense, in that there would be no point in taking conservation and management measures in respect of straddling fish stocks and highly migratory fish stocks on the high seas if equivalent measures are not taken within the relevant EEZ, or for that matter the other way round. It does, however, mean that if OECS member countries become parties to the 1995 UN Fish Stocks Agreement and to any subregional or regional management organisation or arrangement they would have to ensure that conservation and management measures within the EEZ are compatible with those which apply on the high seas.

#### **5.2.1.6 Duties of the Flag State**

Article 18 (1) of the 1995 UN Fish Stocks Agreement requires States to take such measures as may be necessary to ensure that vessels flying their flag comply with subregional and regional conservation and management measures and do not seek to undermine them. Similarly to the FAO Compliance Agreement, States are required only to authorise their vessels to fish on the high seas where they can exercise effectively their responsibilities under the 1995 UN Fish Stocks Agreement and The 1982 UN Convention.

Article 18 (3) lists a number of measures which States must take in respect of vessels which fly their flag, and which would require legislation at the national level:

- “3. Measures to be taken by a State in respect of vessels flying its flag shall include:
- e. control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
  - f. establishment of regulations:

- i. to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligation of the flag State;
- ii. to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
- iii. to require vessels to fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorised person;
- iv. to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
- g. establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any nations laws of the flag State regarding the release of such information;
- h. requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems....;
- i. requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
- j. requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and marketing statistics;
- k. monitoring, control and surveillance of such vessels, their fishing operations and related activities by, *inter alia*:
  - i. the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to Articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
  - ii. the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and
  - iii. the development and implementation of vessel monitoring systems, including as appropriate, satellite transmitter systems, in accordance with any national programme and those which have been subregionally, regionally or globally agreed among the States concerned;
- l. regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and
- m. regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

While the basic principles, provisions for licensing, boarding and inspections etc. will need to be included in primary legislation, much of the detail will have to be left to regulations as any monitoring, control and surveillance measures will have to be compatible with measures agreed at the subregional, regional and global levels. Pending the establishment of fleets capable of fishing for highly migratory fish stocks on the high seas the costs and effort required to implement such provisions would not be substantial.

#### **5.2.1.7 Compliance and enforcement by the Flag State**

Article 19 requires each State Party to ensure compliance by any vessel flying its flag with subregional and regional compliance measures in respect of straddling fish stocks and highly migratory fish stocks, irrespective of where the violation occurs. In particular States are

obliged: to immediately and fully investigate any alleged violation; to require vessels to give information to the investigating authority; to promptly refer the case to the prosecuting authority so that proceedings can be started without delay; and in the event that a conviction is secured to ensure that the vessel involved does not resume high seas fishing until all of the outstanding sanctions have been complied with. Any such sanctions must be of adequate severity to be effective in securing compliance. In this regard the 1995 UN Fish Stocks Agreement follows the FAO Compliance Agreement and the comments as to the severity of the existing sanctions applicable to local vessels under the fisheries acts also apply.

In addition, sanctions against masters and other officers must include provisions whereby authorizations to serve in such posts can be withdrawn. Again legislation would be required at national level to implement certain of these provisions, but for most of the OECS members the practical implications of implementation will await the development of high seas fishing capacity.

#### **5.2.1.8 International cooperation**

Articles 20 through 22 contain a number of important measures on international cooperation on the high seas to ensure compliance with any regional or subregional agreement or arrangement.

Without going into detail, Article 21 allows a State which is both a Party to the Agreement and a member of a regional conservation and management organisation or arrangement to board and inspect a vessel registered under the flag of another State Party to ensure compliance with subregional or regional conservation and management measures, even if the latter State is not a Party to the organisation or arrangement. In addition, where there are clear grounds for believing that the vessel has committed a "serious violation" (as defined in the Agreement), the inspector may stay on board for further investigation, and bring the vessel into the nearest port where necessary.

The Agreement envisages the creation of detailed rules for boarding and inspection, in accordance with the general principles set out in the Agreement, by subregional or regional conservation and management organisations or arrangements.

Again, any State ratifying the 1995 UN Fish Stocks Agreement will need to amend its national legislation to require its vessels to comply with boarding and inspections on the high seas by the officers of other State Parties according to the rules of any subregional or regional conservation and management organisation or arrangement.

#### **5.2.1.9 Port state powers**

Article 23 introduces a new concept of "port State jurisdiction" in respect of fishing vessels.<sup>34</sup> This should be seen alongside the provisions of the 1982 UN Convention relating

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<sup>34</sup> Hayashi, M. "The 1995 Agreement on Straddling and Highly Migratory Fish Stocks" 8(4) *EC Fisheries Cooperation Bulletin*, Brussels, 1995.

to violations of rules and standards designed to prevent pollution. It provides that when a fishing vessel is voluntarily in its port, a port State may inspect documents, fishing gear, catch on board etc. to ensure compliance with subregional or regional conservation and management measures applicable on the high seas.

Again legislation would be required by OECS members. This is because although the harmonised fisheries legislation does permit authorised officers to search and inspect foreign fishing vessels which are in port, this power is given only for the purposes of enforcing the fisheries acts, which in turn only apply to fishing activities within the fishery waters and not on the high seas.

## ***5.2.2 Evaluation - implementation at the national level***

### **5.2.2.1 The legislative requirements of implementation**

Regarding the need for new provisions in national legislation, as already mentioned, the necessary result could be achieved by each OECS member country either amending its existing fisheries act or passing a new high seas fisheries act. There would appear to be advantages and disadvantages to both approaches - and these were discussed in as much detail as possible with the fisheries officers consulted.

One advantage of amending the existing fisheries acts by including the necessary amendments would be that all of the relevant primary fisheries legislation would be contained in one text. In addition it would at the same time be possible, if considered appropriate, to include provisions to establish the appropriate framework for making policy decisions on conservation and management measures and fisheries development within the EEZ.<sup>35</sup>

On the other hand, as there are currently no home based high seas fishing fleets the practical effect of this approach might be to over-complicate the fisheries acts by including provisions which are of little direct relevance, at present, to those involved in the fisheries sector and its administration. If high seas fishing fleets are developed in the OECS member countries they are likely to be a relatively discrete sector of the fisheries industry and there would be no harm in their being primarily governed by a separate law. In addition, the necessary amendments to be made to the existing fisheries acts would not be insignificant. For example the whole scope of application of the acts would have to be modified - by extending it to the high seas.

However, possibly the most important argument in favour of the enactment of a separate high seas fisheries act is the fact that the OECS members are at different stages of implementation in respect of the harmonised legislation. While, as recounted above, States such as Antigua & Barbuda and Saint Lucia are presently considering a major review of their fisheries acts, other OECS members are currently either implementing the harmonised legislation, or are about to do so. In due course there may be a need for amendments or revision of the provisions of the legislation once it has been applied. Amendments to the acts at this stage to include high seas provisions would be premature in that they would not be

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<sup>35</sup> As discussed in Section 5.2.1.2.

able to include any of the substantive amendments which may be needed in due course. Repeated amendments would be undesirable.

In theory there is no reason why two approaches could not be taken by the OECS members according to their own needs. In other words each country could either amend its existing fisheries act or introduce a separate high seas fisheries act. This, however, would have the effect of diminishing the effectiveness of the fisheries legislation harmonisation programme and for the OECS judiciary, as well, a common approach would presumably be preferable.

Consequently, while accepting that the arguments are fairly evenly balanced, and taking into account the comments of the persons consulted by the mission, on balance a view has been formed that proceeding by way of a separate high seas fisheries act would be more appropriate.

#### **5.2.2.2 The other aspects of implementation at the national level and at OECS level**

As regards the non-legislative requirements of implementation of the 1995 UN Fish Stocks Agreement at the national level these can be divided into two categories. The first category comprises the obligations contained in Articles 5, 6 and 7 which apply to fisheries activities within the EEZ. The second category comprises the obligations of State Parties in respect of vessels which fly their flag and which fish for straddling fish stocks or highly migratory fish stocks on the high seas.

Again pending the development of high seas fishing fleets, the obligations of the second category, in connection with vessel registration, monitoring and regulation and the necessary vessel and fisheries activity data management requirements, would be minimal for most of the OECS members. Again, however, the position of Saint Vincent & the Grenadines may be different as it is possible that many of the foreign based fishing vessels on its register fish for straddling fish stocks and highly migratory fish stocks on the high seas.

As regards the duties to which OECS members would be subject in respect of the conservation and management of highly migratory fish stocks within their EEZs, as described above, these would not appear to be particularly difficult to comply with. However these issues will need to be discussed in more detail once the fisheries departments concerned have had more opportunity to consider the provisions in detail.

Another issue which should also be discussed is the desirability of developing a role for the OECS in respect of these obligations. The OECS could have an important role in developing the capacity of the member countries in respect of data collection and analysis, monitoring and surveillance, in coordinating such activities and in acting as a central point of contact to represent the member countries in dealings with any subregional or regional fisheries management organisation or arrangement established under the 1995 UN Fish Stocks Agreement.

Part VII of the 1995 UN Fish Stocks Agreement addresses the requirements of developing States and the need to provide assistance to them. A number of specific State obligations are set out to this end, which include a duty to cooperate to enhance the ability of developing

States to conserve and manage stocks, to develop their own fisheries, to participate in high seas fisheries activities and to facilitate their participation in subregional and regional management organisations and agreements. Provisions of this nature are to be found in many modern international agreements concerned with natural resources and it is often difficult for developing countries to rely on them and achieve concrete benefits.

Nevertheless, if the OECS members were to actively participate in the early development of subregional or management organisations and arrangements they would be better placed to extract assistance on the basis of these provisions. After all, the nations whose vessels fish for highly migratory fish stocks on the high seas have as much interest in seeing the sustainable management and development of such stocks in the fishing waters of the OECS members as the latter have in seeing the same take place on the high seas.

### *5.2.3 Implementation at the international level*

While it was beyond the terms of reference of this report to address this issue in detail, consideration should be given at this stage as to how the 1995 UN Fish Stocks Agreement could be implemented at the subregional or regional level. In particular the OECS member countries would benefit from being involved at the outset in the creation of any regional management organisation or arrangement in respect of the highly migratory fish stocks to ensure that their interests, as coastal States, are fully considered and protected.<sup>36</sup> To this end there would appear to be advantages in the OECS members taking a common position in respect of both the question of adherence and in the matter of implementation.

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<sup>36</sup> In accordance with article 7.

## 6 RECOMMENDATIONS

As shown in this report, the two agreements raise important issues for the members of the OECS. It is recommended, therefore, that a workshop be organised by the OECS, with appropriate assistance from FAO, to consider further the matters raised in this report.

### 6.1 The tasks of the workshop

The recommended tasks of the workshop would be:

- to consider the potential implications of the two agreements on fisheries conservation, management and development in the OECS member countries;
- to consider how the two agreements could be implemented at the national level and to make concrete recommendations in respect of legislative and other needs;
- to consider the contents of this report;
- to consider the desirability of implementing the two agreements at the OECS level and to discuss how this could be achieved;
- to discuss how the 1995 UN Fish Stocks Agreement could be implemented at the international (regional) level and to identify and consider suitable bodies for this;
- to make recommendations to the OECS.

### 6.2 The participants

It is expected that senior representatives from (1) the fisheries department and (2) the attorney general's chambers/ministry of justice of each OECS member country would attend. Furthermore it is recommended that provision be made for an extra three or four persons to attend from governments, some of whom might come from foreign ministries, or be persons with specific expertise relevant to the workshop, such as experience in monitoring, control and surveillance in the region, or have extensive regional or subregional experience in fisheries management.

In addition, it is recommended that there should be representatives from the OECS Natural Resources Management Unit; it is also suggested that there should be a representative invited from CFRAMP and someone from CARICOM Secretariat. As Barbados has recently been participating in OECS fisheries meetings, as an observer, it would also be appropriate to invite Barbados to send a representative to the workshop.

It is recommended that the workshop should be supported by the presence of one member of the Legal Office, and with the participation of the Fisheries Officer based in the Sub-Regional office in Barbados. Further, it would be very useful to have present at the workshop a legal expert from Norway, who could bring expertise on how a country such as Norway is dealing with the legal aspects of straddling fish stocks, as well as providing insights into the legal process of incorporating into national law agreements such as the FAO Compliance Agreement and the Straddling Fish Stocks Agreement. In addition, the two participants on the mission covered in this report should also be present.

### **6.3 The duration of the workshop**

The workshop should last for not less than four days in view of the amount of work to be undertaken.

### **6.4 Where and when the workshop should take place**

The workshop should take place as soon as practicable, preferably towards the end of 1996, as it is important that the OECS is in a position to take a common position on the two agreements so as to be well placed to participate in the question of implementation at the international level. As the OECS has the necessary facilities it would make sense to hold the workshop at the OECS headquarters.

# Annex A

## Itinerary

Date	Morning	Afternoon
<b>Saint Lucia</b>		
Monday, 26 August 1996	<i>Castries</i> Meetings with the Fisheries Department	Meeting with the Director of Legislative Drafting, Attorney General's Chambers Meeting with Permanent Secretary, Ministry of Agriculture, Lands, Fisheries & Forestry
<b>Saint Vincent &amp; the Grenadines</b>		
Tuesday, 27 August	<i>Travel to Kingstown, Saint Vincent &amp; the Grenadines</i> Meeting with Permanent Secretary, Ministry of Agriculture & Labour Meeting with Attorney General	Meeting with Fisheries Department Meeting with CFRAMP Meeting with Deputy Comptroller, Customs & Excise
<b>Grenada</b>		
Wednesday, 28 August	<i>Travel to Saint George's, Grenada</i> Meeting with Attorney General Meeting with Chief Fisheries Officer	Meeting with Senior Assistant Secretary, Ministry of Agriculture, Land, Forestry & Fisheries Meeting with Minister of State for Fisheries Meeting with Chief Fisheries Officer
<b>Saint Lucia</b>		
Thursday, 29 August	<i>Travel to Castries, Saint Lucia</i> Meeting at OECS, Natural Resources Management Unit	<i>Travel to Roseau, Dominica</i>
<b>Dominica</b>		
Friday, 30 August	Meeting with Senior Fisheries Officer Meeting with Acting Permanent Secretary, Ministry of Agriculture	Meeting with Attorney General Meeting with Senior Fisheries Officer

Date	Morning	Afternoon
<b>Antigua &amp; Barbuda</b>		
Saturday, 31 August	<i>Travel to Saint John's, Antigua &amp; Barbuda</i>	
Sunday, 1 September		
Monday, 2 September	Meeting with Director of Maritime Services Meeting with Solicitor General Meeting with Permanent Secretary, Ministry of Agriculture, Lands, Fisheries, Planning & Cooperatives	Meeting with Permanent Secretary, Ministry of Foreign Affairs Meeting with Senior Fisheries Officer and Fisheries Adviser
<b>Saint Christopher &amp; Nevis</b>		
Tuesday, 3 September	<i>Travel to Basseterre, Saint Christopher &amp; Nevis</i> Meeting with Fisheries Officers Meeting with Deputy Comptroller of Customs Meeting with Attorney General	Meeting with Permanent Secretary, Ministry of Agriculture, Lands & Housing Meeting with Fisheries Officers
<b>British Virgin Islands</b>		
Wednesday, 4 September	<i>Travel to Road Town, Tortola, British Virgin Islands</i> Meeting with Chief Conservation & Fisheries Officer	Meeting with Permanent Secretary & Assistant Secretary, Ministry of Natural Resources & Labour
Thursday, 5 September	Meeting with Attorney General and Parliamentary Counsel	<i>Travel to Saint John's Antigua &amp; Barbuda</i>
<b>Antigua &amp; Barbuda</b>		
Friday, 6 September	Report writing	Report writing
Saturday, 7 September	Report writing	<i>Travel to Saint Lucia and UK</i>

## **Annex B**

### **Persons Contacted**

#### *Antigua and Barbuda*

Captain Joachim Becker	Director of Marine Services
Mr Donald Edwards	Permanent Secretary, Ministry of Agriculture, Lands, Fisheries, Planning and Cooperatives
Mr Lebrecht Hesse	Solicitor General, Ministry of Justice and Legal Affairs
Ms Cheryl Jeffery	Senior Fisheries Officer
Mr Colin Murdoch	Permanent Secretary, Ministry of Foreign Affairs
Mr Eustace Royer	Fisheries Adviser

#### *British Virgin Islands*

Mrs Sheila Brown	Assistant Secretary, Ministry of Natural Resources and Labour
Mrs Sebulita Christopher	Permanent Secretary, Ministry of Natural Resources and Labour
Mr Chernó S. Jallow	Parliamentary Counsel, Attorney General's Chambers
Mr Bertrand Lettsome	Chief Conservation and Fisheries Officer, Ministry of Natural Resources and Labour
Miss Dancia Penn	Attorney General

#### *Dominica*

Ms Gloria S. Augustus	Senior Fisheries Officer, Fisheries Development Division, Ministry of Agriculture
Mr Livingstone Cassell	Acting Permanent Secretary, Ministry of Agriculture
Mr Anthony Laronde	Attorney General
Mr Norman Letang	Comptroller of Customs and Excise

#### *Grenada*

Mr Michael Baptiste	Minister of State for Fisheries
Ms Maureen Baptiste	Senior Assistant Secretary, Ministry of Agriculture, Land, Forestry & Fisheries

Mr James Finlay Chief Fisheries Officer

Mr Errol Thomas Attorney General

*Saint Christopher and Nevis*

Mr Raphael A. Archibald Permanent Secretary, Ministry of Agriculture, Lands and Housing

Mr Delano Bart Attorney General, Ministry of Legal Affairs

Mr Huca Fell Deputy Comptroller of Customs

Mr Joseph Simmonds Senior Fisheries Officer, Fisheries Division, Department of Agriculture, Ministry of Agriculture, Lands & Housing

Mr Ralph Wilkins Fisheries Officer, Fisheries Division, Department of Agriculture, Ministry of Agriculture, Lands & Housing

*Saint Lucia*

Mr Victor Appeah Director of Legislative Drafting, Attorney General's Chambers and Ministry of Legal Affairs

Mr Cosmos Richardson Permanent Secretary, Ministry of Agriculture, Lands, Fisheries & Forestry

*Saint Vincent and the Grenadines*

Mr Carlos James Deputy Comptroller, Customs & Excise

Mr Carl Joseph Attorney General

Mr Stewart Nanton Senator, Commissioner of the International Whaling Commission

Mr Raymond Ryan Senior Fisheries Officer

Mr Carlton O. Samuel Permanent Secretary, Ministry of Agriculture & Labour

*Organization of Eastern Caribbean States (OECS)*

Dr Vasantha Chase Director, Natural Resources Management Unit

Mr Graham J. Holden Programme Coordinator, Maritime Boundary Delimitation Process

Mr Alva Lynch Fisheries Development Officer, Natural Resources Management

Unit

Mr Peter A. Murray      Programme Officer, Natural Resources Management Unit

*CARICOM Fisheries Resources, Assessment and Management Programme (CFRAMP)*

Mr Boris Fabres      Senior Biologist, Pelagic and Reef Fishes Resource Assessment  
and Management Programme

## Annex C

### The List of Highly Migratory Species contained in Annex I of the 1982 UN Convention

1. Albacore tuna : *Thunnus alalunga*.
2. Bluefin tuna : *Thunnus thynnus*.
3. Bigeye tuna : *Thunnus obesus*.
4. Skipjack tuna : *Katsuwonus pelamis*.
5. Yellowfin tuna : *Thunnus albacares*.
6. Blackfin tuna : *Thunnus atlanticus*.
7. Little tuna : *Euthynnus alletteratus*; *Euthynnus affinis*.
8. Southern bluefin tuna : *Thunnus maccoyii*.
9. Frigate mackerel : *Auxis thazard*; *Auxis rochei*.
10. Pomfrets : Family *Bramidae*
11. Marlins : *Tetrapturus angustirostis*; *Tetrapturus belone*; *Tetrapturus pfluegeri*; *Tetrapturus albidus*; *Tetrapturus audax*; *Tetrapturus georgei*; *Makaira mazara*; *Makaira indica*; *Makaira nigricans*.
12. Sail fishes : *Istiophorus platyperus*; *Istiophorus albicans*.
13. Swordfish : *Xiphias gladius*.
14. Sauries : *Scomberesox saurus*; *Cololabis saira*; *Cololabis adocetus*; *Scomberesox saurus scombroides*.
15. Dolphin : *Coryphaena hippurus*; *Coryphaena equisetis*.
16. Oceanic sharks : *Hexanchus griseus*; *Cetorhinus maximus*; Family *Alopiidae*; *Rhincodon typus*; Family *Carharhinidae*; Family *Sphyrnidae*; Family *Isurida*.
17. Cetaceans : Family *Physteridae*; Family *Balaenopteridae*; Family *Balaenidae*; Family *Eschrichtiidae*; Family *Monodontidae*; Family *Ziphiidae*; Family *Delphinidae*.

## **Annex D**

### **Schedule of legislation relevant to the 1995 UN Fish Stocks Agreement and the FAO Compliance Agreement currently in force in OECS member countries**

#### **Antigua and Barbuda**

##### **Fisheries**

Marine Areas (Preservation and Enhancement) Act, No.5 of 1972  
Marine Areas (Preservation and Enhancement) Regulations 1973  
Fisheries Act, No. 14 of 1983  
Fisheries Regulations, Statutory Instruments 1990, No. 10

##### **Maritime Boundaries**

Territorial Waters Act, No. 18 of 1982  
Maritime Areas Act, No. 19 of 1982

##### **Shipping**

Antigua and Barbuda Merchant Shipping Act, No. 1 of 1985

#### **British Virgin Islands**

##### **Fisheries**

Fisheries Ordinance, No. 18 of 1979  
Fisheries (Amendment) Ordinance, No. 12 of 1980  
Fisheries Rules, Statutory Rules and Orders 1982, No. 31  
Protected Areas Order, Statutory Rules and Orders 1990, No. 14

##### **Maritime Boundaries**

Proclamation dated 9 March 1977 establishing a fisheries zone contiguous to the territorial sea of the Virgin Islands

##### **Shipping**

United Kingdom Merchant Shipping Acts 1894 to 1981  
Merchant Shipping (Adoption of U.K. Legislation) Act 1994<sup>1</sup>

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<sup>1</sup> Includes adopted statutory instruments.

## **Dominica**

### **Fisheries**

Protection of Fishermen Act, No. 8 of 1963  
Fisheries Act, No. 11 of 1987  
(Regulations are still in the process of finalization)

### **Maritime Boundaries**

Territorial Sea, Contiguous Zone, Exclusive Economic and Fisheries Zones Act, No. 26 of 1981

### **Shipping**

Registration of Ships Act, No. 42 of 1975

## **Grenada**

### **Fisheries**

Fisheries Act, No. 15 of 1986  
Fisheries Regulations, Statutory Rules & Orders No. 9 of 1987  
Fisheries (Fishing Vessels Safety) Regulations, Statutory Rules & Orders No. 3 of 1990  
CARICOM Common External Tariff Order, Statutory Rules & Orders No. 18 of 1995  
Fisheries (Amendment) Regulations, Statutory Rules & Orders No. 24 of 1996

### **Maritime Boundaries**

Territorial Waters and Marine Boundaries Act, 1990

### **Shipping**

Shipping Act, No. 47 of 1994

## **Saint Christopher and Nevis**

### **Fisheries**

Fisheries Act, No. 4 of 1984  
Fisheries Regulations, Statutory Rules and Orders 1995, No. 11

### **Maritime Boundaries**

Maritime Areas Act, No. 3 of 1984

## **Shipping**

Merchant Shipping Act, No. 15 of 1985

## **Saint Lucia**

### **Fisheries**

Fishing Industry (Assistance) Regulations, Statutory Rules & Orders No. 25 of 1973

Fisheries Act, No. 10 of 1984

Fisheries Regulations, Statutory Rules & Orders No. 9 of 1994

### **Maritime Boundaries**

Maritime Areas Act, No. 6 of 1984

## **Shipping**

Shipping Act, No. 11 of 1994

## **Saint Vincent & the Grenadines**

### **Fisheries**

Fisheries Act, No. 8 of 1986

Fisheries Regulations, Statutory Rules & Orders No. 1 of 1987

### **Maritime Boundaries**

Maritime Areas Act, No. 15 of 1983

## **Shipping**

Merchant Shipping Act, No. 22 of 1982

## Annex E

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