

AGREEMENT FOR THE ESTABLISHMENT OF THE INDIAN OCEAN TUNA COMMISSION

PREAMBLE

The Contracting Parties,

Recognizing the desirability of promoting the peaceful uses of the seas and oceans, and the equitable and efficient utilization and conservation of their living resources,

Desiring to contribute to the realization of a just and equitable international economic order, with due regard to the special interests and needs of developing countries,

Desiring to cooperate with a view to ensuring the conservation of tuna and tuna-like species in the Indian Ocean and promoting their optimum utilization, and the sustainable development of the fisheries,

Recognizing, in particular, the special interests of developing countries in the Indian Ocean Region to benefit equitably from the fishery resources,

Considering the United Nations Convention on the Law of the Sea opened for signature on 10 December 1982 and, in particular, Articles 56, 64 and 116 to 119 thereof,

Considering that the conservation of tuna and tuna-like species and the sustainable and rational utilization of tuna resources in the Indian Ocean would be greatly enhanced by the establishment of cooperative measures by both the coastal states of the Indian Ocean and other States whose nationals harvest tuna and tuna-like species in the region,

Bearing in mind the Western Indian Ocean Tuna Organization Convention which was opened for signature on 19 June 1991,

Considering that the aforementioned objectives could best be achieved through the establishment of a Commission set up under Article XIV of the Constitution of the Food and Agriculture Organization of the United Nations,

Have agreed as follows:

Article I. ESTABLISHMENT

The Contracting Parties hereby agree to establish the Indian Ocean Tuna Commission (hereinafter referred to as the "Commission") within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO").

Article II. AREA OF COMPETENCE

The area of competence of the Commission (hereinafter referred to as the "Area") shall be the Indian Ocean (defined for the purpose of this Agreement as being FAO statistical areas 51 and 57 as shown on the map set out in Annex A to this Agreement) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.

Article III. SPECIES AND STOCKS

The species covered by this Agreement shall be those set out in Annex B. The term "stocks" means the populations of such species which are located in the Area or migrate into or out of the Area.

Article IV. MEMBERSHIP

1. Membership in the Commission shall be open to Members and Associate Members of FAO
 - (a) that are:
 - (i) coastal States or Associate Members situated wholly or partly within the Area;

- (ii) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement; or
 - (iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement;
- and
- (b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII.

2. The Commission may, by a two-thirds majority of its Members, admit to membership any other States that are not Members of FAO, but are Members of the United Nations, or of any of its Specialized Agencies or of the International Atomic Energy Agency, provided that such States:

- (a) are
 - (i) coastal States situated wholly or partly within the Area; or
 - (ii) States whose vessels engage in fishing in the Area for stocks covered by this Agreement; and
- (b) have submitted an application for membership and a declaration made in a formal instrument that they accept this Agreement as in force at the time of acceptance in accordance with paragraph 2 of Article XVII.

3. With a view to furthering the objectives of this Agreement, the Members of the Commission shall cooperate with each other to encourage any State or regional economic integration organization which is entitled to become, but is not yet, a Member of the Commission, to accede to this Agreement.

4. If any Member of the Commission ceases to meet the criteria set out in paragraphs 1 or 2 above for two consecutive calendar years, the Commission may, after consultation with the Member concerned, determine that the Member is deemed to have withdrawn from this Agreement effective as from the date of that determination.

5. For the purposes of this Agreement, the term “whose vessels” in relation to a Member Organization means vessels of a Member State of such Member Organization.

6. Nothing in this Agreement, nor any act or activity carried out in pursuance of this Agreement, shall be interpreted as changing or in any way affecting the position of any party to this Agreement with respect to the legal status of any area covered by this Agreement.

Article V. OBJECTIVES, FUNCTIONS AND RESPONSIBILITIES OF THE COMMISSION

1. The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.

2. In order to achieve these objectives, the Commission shall have the following functions and responsibilities, in accordance with the principles expressed in the relevant provisions of the United Nations Convention on the Law of the Sea:

- (a) to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the

conservation and management of the stocks and to fisheries based on the stocks covered by this Agreement;

- (b) to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by this Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries;
- (c) to adopt, in accordance with Article IX and on the basis of scientific evidence, conservation and management measures, to ensure the conservation of the stocks covered by this Agreement and to promote the objective of their optimum utilization throughout the Area;
- (d) to keep under review the economic and social aspects of the fisheries based on the stocks covered by this Agreement bearing in mind, in particular, the interests of developing coastal states;
- (e) to consider and approve its programme and autonomous budget, as well as the accounts for the past budgetary period;
- (f) to transmit to the Director-General of FAO (hereinafter referred to as the "Director-General") reports on its activities, programme, accounts and autonomous budget and on such other matters as may be appropriate for action by the Council or the Conference of FAO;
- (g) to adopt its own Rules of Procedure, Financial Regulations and other internal administrative regulations as may be necessary to carry out its functions; and
- (h) to carry out such other activities as may be necessary to fulfil its objectives as set out above.

3. The Commission may adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement.

Article VI. SESSIONS OF THE COMMISSION

1. Each Member of the Commission shall be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

2. Each Member of the Commission shall have one vote. Unless otherwise provided in this Agreement, decisions and recommendations of the Commission shall be taken by a majority of the votes cast. A majority of the Members of the Commission shall constitute a quorum.

3. The Commission may adopt and amend, as required, its own Rules of Procedure by a two-thirds majority of its Members, which Rules shall not be inconsistent with this Agreement or with the Constitution of FAO.

4. The Chairperson of the Commission shall convene an annual regular session of the Commission.

5. Special sessions of the Commission may be convened by the Chairperson of the Commission at the request of at least one-third of its Members.

6. The Commission shall elect its Chairperson and no more than (two) Vice-Chairpersons, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than four years in succession. In electing the Chairperson and the Vice-Chairpersons the Commission shall pay due regard to the need for an equitable representation from among the Indian Ocean States.

7. The Commission may adopt and amend, as required, the Financial Regulations of the Commission by a two-thirds majority of its Members, which Financial Regulations shall be consistent with the

principles embodied in the Financial Regulations of FAO. The Financial Regulations and amendments thereto shall be reported to the Finance Committee of FAO which shall have the power to disallow them if it finds that they are inconsistent with the principles embodied in the Financial Regulations of FAO.

8. In order to ensure close cooperation between the Commission and FAO, FAO shall have the right to participate without vote in all meetings of the Commission and subsidiary bodies established in accordance with paragraph 5 of Article XII.

Article VII. OBSERVERS

1. Any Member or Associate Member of FAO that is not a Member of the Commission may, upon request, be invited to be represented by an observer at sessions of the Commission. It may submit memoranda and participate without vote in the discussions.

2. States which, while not Members of the Commission nor Members or Associate Members of FAO, are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon request and subject to the concurrence of the Commission through its Chairperson and to the provisions relating to the granting of observer status to nations adopted by the Conference of FAO, be invited to attend sessions of the Commission as observers.

3. The Commission may invite intergovernmental or, on request, non-governmental organizations having special competence in the field of activity of the Commission to attend such of its meetings as the Commission may specify.

Article VIII. ADMINISTRATION

1. The Secretary of the Commission (hereinafter referred to as the "Secretary") shall be appointed by the Director-General with the approval of the Commission, or in the event of appointment between regular sessions of the Commission, with the approval of the Members of the Commission. The staff of the Commission shall be appointed by the Secretary and shall be under the Secretary's direct supervision. The Secretary and staff of the Commission shall be appointed under the same terms and conditions as staff members of FAO; they shall, for administrative purposes, be responsible to the Director-General.

2. The Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission. The Secretary shall also act as Secretary to other subsidiary bodies established by the Commission, as required.

3. The expenses of the Commission shall be paid out of its autonomous budget except those relating to such staff and facilities as can be made available by FAO. The expenses to be borne by FAO shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of FAO in accordance with the General Rules and the Financial Regulations of FAO.

4. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission, its sub-commissions and its committees, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. The expenses of experts invited by the Commission to attend, in their individual capacity, meetings of the Commission or its sub-commissions or committees shall be borne by the budget of the Commission.

Article IX. PROCEDURES CONCERNING CONSERVATION AND MANAGEMENT MEASURES

1. Subject to paragraph 2, the Commission may, by a two-thirds majority of its Members present and voting, adopt conservation and management measures binding on Members of the Commission in accordance with this Article.
2. Conservation and management measures for stocks for which a sub-commission has been established under paragraph 2 of Article XII, shall be adopted upon the proposal of the sub-commission concerned.
3. The Secretary shall, without undue delay, notify the Members of the Commission of any conservation and management measures adopted by the Commission.
4. Subject to paragraphs 5 and 6, conservation and management measures adopted by the Commission under paragraph 1, shall become binding on Members 120 days from the date specified in the Secretary's notification or on such other date as may be specified by the Commission.
5. Any Member of the Commission may, within 120 days from the date specified or within such other period as may be specified by the Commission under paragraph 4, object to a conservation and management measure adopted under paragraph 1. A Member of the Commission which has objected to a measure shall not be bound thereby. Any other Member of the Commission may similarly object within a further period of 60 days from the expiry of the 120-day period. A Member of the Commission may also withdraw its objection at any time and become bound by the measure immediately if the measure is already in effect or at such time as it may come into effect under this article.
6. If objections to a measure adopted under paragraph 1 are made by more than one-third of the Members of the Commission, the other Members shall not be bound by that measure; but this shall not preclude any or all of them from giving effect thereto.
7. The Secretary shall notify each Member of the Commission immediately upon receipt of each objection or withdrawal of objection.
8. The Commission may, by a simple majority of its Members present and voting, adopt recommendations concerning conservation and management of the stocks for furthering the objectives of this Agreement.

Article X. IMPLEMENTATION

1. Each Member of the Commission shall ensure that such action is taken, under its national legislation, including the imposition of adequate penalties for violations, as may be necessary to make effective the provisions of this Agreement and to implement conservation and management measures which become binding on it under paragraph 1 of Article IX.
2. Each Member of the Commission shall transmit to the Commission an annual statement of the actions it has taken pursuant to paragraph 1. Such statement shall be sent to the Secretary of the Commission not later than 60 days before the date of the following regular session of the Commission.
3. The Members of the Commission shall cooperate, through the Commission, in the establishment of an appropriate system to keep under review the implementation of conservation and management measures adopted under paragraph 1 of Article IX, taking into account appropriate and effective tools and techniques to monitor the fishing activities and to gather the scientific information required for the purposes of this Agreement.
4. The Members of the Commission shall cooperate in the exchange of information regarding any fishing for stocks covered by this Agreement by nationals of any State or entity which is not a Member of the Commission.

Article XI. INFORMATION

1. The Members of the Commission shall, on the request of the Commission, provide such available and accessible statistical and other data and information as the Commission may require for the purposes of this Agreement. The Commission shall decide the scope and form of such statistics and the intervals at which they shall be provided. The Commission shall also endeavour to obtain fishing statistics from fishing States or entities which are not Members of the Commission.
2. Each Member of the Commission shall provide to the Commission copies of laws, regulations and administrative instructions in force or, where appropriate, summaries thereof, relating to the conservation and management of stocks covered by this Agreement and shall inform the Commission of any amendment or repeal of such laws, regulations and administrative instructions.

Article XII. SUBSIDIARY BODIES

1. The Commission shall establish a permanent Scientific Committee.
2. The Commission may establish sub-commissions to deal with one or more of the stocks covered by this Agreement.
3. Such sub-commissions shall be open to Members of the Commission which are coastal States lying on the migratory path of the stocks concerned in the sub-commission or are States whose vessels participate in the fisheries of these stocks.
4. A sub-commission shall provide a forum for consultation and cooperation on matters related to the management of the stocks concerned and in particular:
 - (a) to keep under review the stocks concerned and to gather scientific and other relevant information relating to the stocks concerned;
 - (b) to assess and analyse the conditions and trends of the stocks concerned;
 - (c) to coordinate research and studies of the stocks concerned;
 - (d) to report to the Commission on its findings;
 - (e) to propose such recommendations for action by the Members of the Commission as may be appropriate, including action to obtain necessary information relating to the stocks and proposals for conservation and management measures;
 - (f) to consider any matter referred to it by the Commission.
5. The Commission may, subject to the provisions of this Article, establish such committees, working parties or other subsidiary bodies as may be necessary for the purposes of this Agreement.
6. The establishment by the Commission of any sub-commission which requires funding by the Commission, and of any committee, working party or other subsidiary body shall be subject to the availability of the necessary funds in the approved autonomous budget of the Commission or of FAO as the case may be. When the related expenses are to be borne by FAO, the determination of such availability shall be made by the Director-General. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Commission shall have before it a report from the Secretary or the Director-General, as appropriate, on the administrative and financial implications.
7. Subsidiary bodies shall provide to the Commission such information regarding their activities as the Commission may require.

Article XIII. FINANCES

1. Each Member of the Commission undertakes to contribute annually its share of the autonomous budget in accordance with a scale of contributions to be adopted by the Commission.

2. At each regular session, the Commission shall adopt its autonomous budget by consensus of its Members provided, however, that if, after every effort has been made, a consensus cannot be reached in the course of that session, the matter will be put to a vote and the budget shall be adopted by a two-thirds majority of its Members.
3. (a) The amount of the contribution of each Member of the Commission shall be determined in accordance with a scheme which the Commission shall adopt and amend by consensus.
- (b) In adopting the scheme, due consideration shall be given to each Member being assessed an equal basic fee and a variable fee based, *inter alia*, on the total catch and landings of species covered by this Agreement in the Area, and the *per capita* income of each Member.
- (c) The scheme adopted or amended by the Commission shall be set out in the Financial Regulations of the Commission.
4. Any non-Member of FAO that becomes a Member of the Commission shall be required to make such contribution towards the expenses incurred by FAO with respect to the activities of the Commission as the Commission may determine.
5. Contributions shall be payable in freely convertible currencies unless otherwise determined by the Commission with the concurrence of the Director-General.
6. The Commission may also accept donations and other forms of assistance from organizations, individuals and other sources for purposes connected with the fulfilment of any of its functions.
7. Contributions and donations and other forms of assistance received shall be placed in a Trust Fund administered by the Director-General in conformity with the Financial Regulations of FAO.
8. A Member of the Commission which is in arrears in the payment of its financial contributions to the Commission shall have no vote in the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Commission may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Member.

Article XIV. HEADQUARTERS

The Commission, after consultation with the Director-General, shall determine the place of its headquarters.

Article XV. COOPERATION WITH OTHER ORGANIZATIONS AND INSTITUTIONS

1. The Commission shall cooperate and make appropriate arrangements therefore with other intergovernmental organizations and institutions, especially those active in the fisheries sector, which might contribute to the work and further the objectives of the Commission in particular with any intergovernmental organization or institution dealing with tuna in the Area. The Commission may enter into agreements with such organizations and institutions. Such agreements shall seek to promote complementarity and, subject to paragraph 2, to avoid duplication in and conflict with the activities of the Commission and such organizations.
2. Nothing in this Agreement shall prejudice the rights and responsibilities of other intergovernmental organizations or institutions dealing with tuna or a species of tuna in the Area or the validity of any measures adopted by such organization or institution.

Article XVI. COASTAL STATES' RIGHTS

This Agreement shall not prejudice the exercise of sovereign rights of a coastal state in accordance with the international law of the sea for the purposes of exploring and exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction.

Article XVII. ACCEPTANCE

1. Acceptance of this Agreement by any Member or Associate Member of FAO shall be effected by the deposit of an instrument of acceptance with the Director-General.
2. Acceptance of this Agreement by any State referred to in paragraph 2 of Article IV shall be effected by the deposit of an instrument of acceptance with the Director-General. Acceptance shall become effective on the date on which the Commission approves the application for membership.
3. The Director-General shall inform all Members of the Commission, all Members of FAO and the Secretary-General of the United Nations of all acceptances that have become effective.

Article XVIII. ENTRY INTO FORCE

This Agreement shall enter into force as from the date of receipt by the Director-General of the tenth instrument of acceptance. Thereafter, with respect to each Member or Associate Member of FAO or State referred to in paragraph 2 of Article IV which subsequently deposits an instrument of acceptance, this Agreement shall enter into force on the date on which such acceptance takes effect or becomes effective in accordance with Article XVII above.

Article XIX. RESERVATIONS

Acceptance of this Agreement may be made subject to reservations in accordance with the general rules of public international law as reflected in the provisions of Part II, Section 2 of the Vienna Convention on the Law of Treaties of 1969.

Article XX. AMENDMENT

1. This Agreement may be amended by a three-quarters majority of the Members of the Commission.
2. Proposals for amendments may be made by any Member of the Commission or by the Director-General. Proposals made by a Member of the Commission shall be addressed to both the Chairperson of the Commission and the Director-General and those made by the Director-General shall be addressed to the Chairperson of the Commission, not later than 120 days before the Session of the Commission at which the proposal is to be considered. The Director-General shall immediately inform all Members of the Commission of all proposals for amendments.
3. Any amendment to this Agreement shall be reported to the Council of FAO which may disallow an amendment which is clearly inconsistent with the objectives and purposes of FAO or the provisions of the Constitution of FAO.
4. Amendments not involving new obligations for Members of the Commission shall take effect for all Members from the date of their adoption by the Commission, subject to paragraph 3 above.
5. Amendments involving new obligations for Members of the Commission shall, after adoption by the Commission, subject to paragraph 3 above, come into force in respect of each Member only upon its acceptance thereof. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General. The Director-General shall inform all Members of the Commission and the Secretary-General of the United Nations of such acceptance. The rights and obligations of any Member of the Commission that has not accepted an amendment involving new

obligations shall continue to be governed by the provisions of this Agreement in force prior to the Amendment.

6. Amendments to the Annexes to this Agreement may be adopted by a two-thirds majority of the Members of the Commission and shall come into force from the date of approval by the Commission.

7. The Director-General shall inform all Members of the Commission, all Members and Associate Members of FAO and the Secretary-General of the United Nations of the entry into force of any amendment.

Article XXI. WITHDRAWAL

1. Any Member of the Commission may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Member, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Members of the Commission and the Members and Associate Members of FAO and the Secretary-General of the United Nations of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

2. A Member of the Commission may give notice of withdrawal with respect to one or more of the territories for the international relations of which it is responsible. When a Member gives notice of its own withdrawal from the Commission, it shall state to which territory or territories the withdrawal is to apply. In the absence of such a statement, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, with the exception of territories belonging to an Associate Member which is a Member of the Commission in its own right.

3. Any Member of the Commission that gives notice of withdrawal from FAO shall be deemed to have simultaneously withdrawn from the Commission, and this withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, with the exception of territories belonging to an Associate Member which is a Member of the Commission in its own right.

4. Withdrawal may also take place as provided for under paragraph 4 of Article IV.

Article XXII. TERMINATION

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Members of the Commission drops below ten, unless the remaining Members of the Commission unanimously decide otherwise.

Article XXIII. INTERPRETATION AND SETTLEMENT OF DISPUTES

Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.

Article XXIV. DEPOSITARY

The Director-General shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-Member States as may become party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO which has accepted this Agreement and any non-Member State which has been admitted to membership in the Commission of:
 - (i) the application of a non-Member State to be admitted to membership in the Commission;
 - (ii) proposals for the amendment of this Agreement or of the Annexes thereto;
- (d) inform each Member and Associate Member of FAO and any non-Member States as may become party to this Agreement of:
 - (i) the deposit of instruments of acceptance in accordance with Article XVII;
 - (ii) the date of entry into force of this Agreement in accordance with Article XVIII;
 - (iii) reservations made to this Agreement in accordance with Article XIX;
 - (iv) the adoption of amendments to this Agreement in accordance with Article XX;
 - (v) withdrawals from this Agreement pursuant to Article XXI; and
 - (vi) termination of this Agreement in accordance with Article XXII.