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**A Historical Perspective Leading Up to  
and Including the United Nations  
Conference on Straddling Fish Stocks and  
Highly Migratory Fish Stocks**

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I. Introduction

The United Nations convened a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (Straddling Fish Draft Agreement) in order to discuss the regulation of fish and their migration patterns.<sup>1</sup> The term

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\* Special thanks to Howard Strauss, who spoke at the 1994 Pace Environmental Colloquium on the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The purpose of this comment is to provide a historical portrayal of the facts which led up to the Conference.

1. The spirit of the Conference was to create a regulatory system which promotes a sustainable use of the fish stocks as a whole, rather than allowing them to be exploited by individual States. *Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, Aug. 23, 1994, U.N. GAOR, 4th Sess., U.N. Doc. A/CONF.164/22 (1994), pt. II, art. 5 [hereinafter *Straddling Fish Draft Agreement*]. At the sixth session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which took place

“migratory fish” includes a subset of “straddling fish,” which have distinct behavioral traits.<sup>2</sup> Migration can be described as a “cyclical, and therefore predictable phenomenon, whereby certain animals perform periodic movements between two separate geographic areas, one area usually being where they breed.”<sup>3</sup> Because fish do not observe international oceanic boundaries during their migrations, a problem arises as to who *owns* the fish.

Prior to the international expansion of States’ jurisdictions under the Law of the Sea Convention,<sup>4</sup> such a decision was easy. The High Seas<sup>5</sup> were regarded as *res communis* and open to fishing and exploitation by anyone. Unfortunately, under this scheme, there was no incentive for any party to conserve resources. At that time, the only objective was to take as many resources as possible.<sup>6</sup>

Since 1945, the United States has attempted to assert its dominion over fish which spawned in or migrated through its waters.<sup>7</sup> Unfortunately, this move towards regulation was

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between July 24, 1995 and August 4, 1995, the final agreement was completed. The final agreement will be open for signature in New York on December 4, 1995. Since the final agreement (U.N. GAOR, 6th Sess., A/CONF.164/37 (1995)) became available just before publication, this paper primarily discusses the draft treaty developed in 1994. A brief summary of the new language in the final agreement is included as Addendum I.

2. Straddling fish have migratory paths that take them into two or more jurisdictions during their travels. Cyril De Klemm, *Migratory Species in International Law*, 29 NAT. RESOURCES J. 935 (1989).

3. *Id.* at 937.

4. *United Nations Convention on the Law of the Sea*, U.N. Doc. A/CONF.62/122, reprinted in 21 I.L.M. 1261 (1982) [hereinafter *Law of the Sea*]. See, e.g., Part V of the United Nations Convention on the Law of the Sea (LOS), which deals with the establishment of Exclusive Economic Zones (EEZ). *Id.* at 1279-86.

5. The High Seas are defined as: “[T]he sea or ocean lying outside the territorial waters or maritime belts of a country.” WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1069 (3d ed. 1987).

6. This leads to what has been called the “tragedy of the commons.” See Eldon V.C. Greenberg, *Overview of Ocean Fisheries and Law*, ENVTL. L. INST. 2 (1993).

7. In 1945, President Truman called for the creation of zones contiguous to the coast of the United States in which the United States asserts jurisdiction and control for the purpose of conserving its resources. Proclamation No. 2667, 10 Fed. Reg. 12,303 (1945).

not done in the spirit of preservation, but rather to prevent other countries from taking what was viewed as an American natural resource.<sup>8</sup> However, it was not until relatively recently that the United States secured its control over its indigenous fish population by expanding its jurisdictional reach to include a 200 mile "fishery conservation zone."<sup>9</sup> This action became the precursor for the modern Exclusive Economic Zone (EEZ).<sup>10</sup>

With the creation of the EEZ, the amount of ocean under a State's control was increased, while, conversely, the amount of "High Sea" was substantially diminished.<sup>11</sup> In many instances, the expansion of the EEZ pushed States' boundaries into the migration lanes.<sup>12</sup> Due to the expansion of the EEZ, the availability of fish to the world's fishing fleets had decreased. Fishermen were still free to fish on the High Seas, but once the fish entered a State's EEZ, they became a "natural resource" of that State and were subject to that State's control.

Today, the World's oceans are divided into two distinct areas, the waters within a State's EEZ and the High Seas. When most of the States had a twelve mile territorial limit, the majority of migratory fish were within the High Seas.

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8. See Constance Sathre, *Salmon Interception on the High Seas: A Continuing Controversy Between the United States and Japan*, 16 ENVTL. L. 731, 733-35 (1986).

9. 1976 Fishing Conservation and Management Act (Magnuson Conservation and Management Act), 16 U.S.C. § 1801(b)(1)(A) (1976).

10. EEZs are the extension of "sovereign rights [of a coastal State] over living and non-living resources seaward up to the outer limits of 200-nautical-mile off-shore areas, measured from their coastlines which could be drawn as straight baselines." William O. McLean & Sompong Sucharitkul, *Fisheries Management and Development in the EEZ: The North, South, and Southwest Pacific Experience*, 63 NOTRE DAME L. REV. 492 (1988) [hereinafter *Fisheries Management*].

The United States has recognized this provision in the LOS through its own proclamation of an EEZ. President Reagan issued a proclamation on March 10, 1983, establishing a 200-nautical-mile EEZ for the United States. Proclamation No. 5030 (Mar. 10, 1983), reprinted in 23 VA. J. INT'L L. 600 (1983).

11. De Klemm, *supra* note 2, at 946.

12. *Id.*

However, today with the expansion of the EEZ to 200 miles, a very large number of fish stocks have been nationalized.<sup>13</sup>

This article discusses, in Part II, the background which led up to the Straddling Fish Draft Agreement, including the United Nations Convention on the Law of the Sea (LOS)<sup>14</sup> and the 1992 United Nations Conference on Environment and Development (UNCED). Part III discusses the Straddling Fish Draft Agreement. Part IV analyzes the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (U.N. Conference on Fish Stocks).

## II. Background

The traditional concept of international law regarding freedom of fishing on the High Seas confronted the problem of over-exploitation. The developments of modern science and technology led to the over-exploitation of stocks of living resources in the High Seas. Although international law had addressed fishing and conservation of fish stocks on the High

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13. *Id.*

14. *Law of the Sea*, *supra* note 4.

Seas,<sup>15</sup> it was generally limited to a set of guidelines and a list of conditions.<sup>16</sup>

#### A. United Nations Convention on the Law of the Sea

The 1982 United Nations Convention on the Law of the Sea (LOS)<sup>17</sup> established a multi-faceted regime to deal with

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15. See Grant James Hewison, *High Seas Driftnet Fishing in the South Pacific and the Law of the Sea*, 5 GEO. INT'L ENVTL. L. REV. 313, 336 (1993). The 1958 Geneva Convention on the High Seas, Article 2 states:

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these Articles and by other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

*The 1958 Geneva Convention on the High Seas*, Apr. 29, 1958, U.N. Doc. A/CONF.13/L.52 reprinted in SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT 133 (Alexandro Charles Kiss ed., 1983) [hereinafter *Geneva Convention*].

16. See *id.* The Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas conditioned fishing in the high seas on (1) treaty obligations, (2) interests and rights of Coastal States as provided in the Convention, (3) provisions concerning conservation of living resources of the high seas, and (4) dispute settlement provisions. *The 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas*, A/CONF.13/L.54, U.K.T.S. 339 (1966), 599 U.N.T.S. 285 [hereinafter *Geneva Convention on Fishing*].

17. *Law of the Sea*, *supra* note 4. By 1984, The LOS had been signed, but not ratified, by 99 nations. Subsequently, 40 nations ratified the LOS without reservation, while 21 more ratified with qualifications, thus, attaining one more vote than the 60 required for final ratification. The LOS entered into force on November 16, 1994, 12 months after the 60th ratification was deposited. LAKSHMAN D. GURUSWAMY, ET AL., 1994 SUPPLEMENT OF BASIC DOCUMENTS TO INTERNATIONAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK 775, 1288 (West 1994).

The United States, even though one of the original signatories to the Final Act, refused to ratify the LOS itself because of concerns with, among other things, the deep seabed mining provisions. Hewison, *supra* note 15, at 333 n.87. However, this refusal to ratify may not shield the United States from legal attacks made under the auspices of the LOS. As a document reflecting

the over-exploitation of fish stocks. Some of its articles grew out of the 1958 Geneva Convention on the High Seas<sup>18</sup> and the 1958 Geneva Convention on Fishing and the Conservation of the Living Resources of the High Seas.<sup>19</sup> The over-exploitation of fish stocks caused nations to demand an area of exclusive jurisdiction. These nations demanded exclusive jurisdiction over areas adjacent to their coasts, where they could exercise control over the fishing, management and conservation of fish stocks. These areas became known as "Exclusive Economic Zones" (EEZs),<sup>20</sup> and were established by the Third United Nations Convention on the Law of the Sea.<sup>21</sup> The objective of the EEZs was to promote international cooperation in the conservation, management and development of living resources in the seas.<sup>22</sup> The purpose of

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customary international law, the LOS may be enforceable against a non-signing party. *Id.* at 333.

Although the United States hesitated to ratify the LOS, it has recognized some of its provisions as customary international law. See *Fisheries Management*, *supra* note 10, at 494.

18. *Geneva Convention*, *supra* note 15.

19. *Geneva Convention on Fishing*, *supra* note 16.

20. Prior to the 1980 proclamation, the United States had, as part of The Magnuson Act of 1976, established a zone of "exclusive management authority" over fish originating in North American waters with the exclusion of highly migratory species. The "exclusive management authority" encompassed an area within 200 miles of its coastline. Sathre, *supra* note 8, at 739.

21. *Law of the Sea*, *supra* note 4, pt. V.

22. The Preamble to the 1982 United Nations Convention on the Law of the Sea reads in pertinent parts:

*The States Parties to this Convention,*

*Prompted by the desire to settle, in a spirit of mutual understanding and co-operation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,*

*Noting that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,*

*Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,*

*Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans,*

establishing an EEZ is for the coastal State to retain the exclusive authority "to explore, exploit, conserve and manage the living resources within its zone, free of interference from external powers or non-nationals, except as authorized by the coastal State, and only to the extent and subject to the conditions and limitations contained in the authorization."<sup>23</sup> Thus, LOS dealt with the EEZ in particular detail, as well as the rights, jurisdictions, and duties of coastal States, which are set out in 21 Articles (Articles 55 through 75) contained in part V and in other parts of the Convention.<sup>24</sup>

Articles 63 and 64 of LOS deal, respectively, with straddling and highly migratory fish stocks. These Articles call for cooperation between coastal States and distant water fishing States.<sup>25</sup> However, Articles 63 and 64 of LOS do not provide guidelines for such cooperation, indicate what happens if that cooperation fails, or provide means to ensure that the inner 200 mile regime and the regime beyond the 200 mile zone are honored.<sup>26</sup> There are other relevant provisions dealing with straddling stocks and highly migratory fish stocks in the LOS that are of some assistance, but they do not fill the gaps adequately. This lack of specificity, with respect to fisheries for straddling and highly migratory fish stocks on the High Seas, was not an accident. The Third Law of the Sea Conference tried repeatedly to address this situation, but it was unsuccessful. The efforts began in the early 1970s, when States used a specific species approach, rather than an area approach, to management.<sup>27</sup> In the 1980s, initiatives by a number of larger States to deal with the waters beyond 200 miles resulted in a moving away from the specific species ap-

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the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment, . . . .

*Id.* at pmb1.

23. *Fisheries Management*, *supra* note 10, at 495.

24. *Law of the Sea*, *supra* note 4, pt. V.

25. *Id.*

26. *Id.*

27. See ROBERT L. FRIEDHAM, *NEGOTIATING THE NEW OCEAN REGIME* 134-37 (University of South Carolina Press 1991).



proach. Unfortunately, all these initiatives failed.<sup>28</sup> However, in the late 1980s, it became clear that these failures would not take long to be rectified.

## B. United Nations Conference on Environment and Development

In 1992, approximately 40 countries worldwide coalesced during the United Nations Conference on Environment and Development (UNCED) in Rio. The purpose of the Conference was to insist that a remedy be found for enforcing fishing rights for waters beyond the 200 mile boundary. As a result of pressure from this group of States, and the support of an even broader community, Agenda 21 was developed in 1992. Agenda 21 is one of two non-binding treaties that was signed by the participating nations at UNCED.<sup>29</sup> The Agenda is a "consensus among states as to what collective decisions must be taken to attain and maintain sustainable development."<sup>30</sup> Agenda 21 takes these decisions and creates an action plan that provides "substantive political recommendations to protect the environment and advance sustainable development."<sup>31</sup> These recommendations address areas such as the combat of poverty, protection of human health, protection of the atmosphere, conservation of bio-diversity, and protection of the oceans.<sup>32</sup> Agenda 21 consists of more than 800 pages, divided into 40 chapters and 30 provisions.

Agenda 21 commenced on December 22, 1989, when the United Nations General Assembly decided to hold UNCED.<sup>33</sup> UNCED, sponsored by the United Nations, was the first con-

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28. *Id.*

29. The other treaty was the "Rio Declaration." The Rio Declaration was an ideological umbrella from which the specific recommendations of Agenda 21 were to be reflected. *Negotiators Set to Grapple with Environmental Issues as Nations Assemble for Earth Summit at Rio de Janeiro*, Int'l Env'tl. Daily Rep. (BNA) (June 2, 1992).

30. NICHOLAS A. ROBINSON, *AGENDA 21 AND THE UNCED PROCEEDINGS V* (3d ed. 1992).

31. *Id.* at xvi.

32. *Agenda 21*, U.N. Conf. on Environment and Development, U.N. Doc. A/CONF. 151/26 (1992) reprinted in *AGENDA 21: EARTH'S ACTION PLAN*, at Table of Contents (Nicholas A. Robinson ed., 1993) [hereinafter *AGENDA 21*].

33. ROBINSON, *supra* note 30, at xix.

ference on the environment since the Stockholm Conference twenty years earlier.<sup>34</sup> UNCED was called in response to the 1987 study by the World Commission on Environment and Development (WCED).<sup>35</sup> WCED's study outlined the world's failure to achieve sustainable development. In response to the General Assembly's plan for UNCED, WCED established a headquarters to plan UNCED in Geneva, Switzerland.<sup>36</sup> The Secretariat of UNCED was given the responsibility of developing the first drafts of documents for UNCED and to set up Preparatory Committee Meetings (Prepcom) in preparation of UNCED.<sup>37</sup> The Prepcom, which was comprised of 175 national delegations, met on four separate occasions.<sup>38</sup> Prepcom's fourth and final meeting was completed on April 4, 1992.<sup>39</sup>

Prepcom I was held in Nairobi in August 1990.<sup>40</sup> At Prepcom I, negotiating procedures and working groups were established.<sup>41</sup> The participating countries requested that the Secretariat develop reports which would address issues pertaining to UNCED.<sup>42</sup>

In March 1991, Prepcom II was held in Geneva.<sup>43</sup> Prepcom II was primarily devoted to reviewing the reports of the Secretariat, which included his newly developed proposal for Agenda 21.<sup>44</sup> In August 1991, Prepcom III was held in Geneva.<sup>45</sup> In Prepcom III, Agenda 21 began to take its basic shape.<sup>46</sup> The Secretariat set out the initial negotiating texts

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34. *Negotiators Set to Grapple with Environmental Issues as Nations Assemble for Earth Summit at Rio de Janeiro*, *supra* note 29.

35. ROBINSON, *supra* note 30, at xviii. The U.N. convened the WCED to study environmental trends and make recommendations.

36. *Id.* at xix.

37. *Id.*

38. *Highlights: Overview of UNCED Process*, Greenwire, June 1, 1992, available in LEXIS, Env'tl. Library, News File.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Highlights: Overview of UNCED Process*, *supra* note 38.

43. *Id.*

44. *Id.*

45. *Id.*

46. ROBINSON, *supra* note 30, at xxi.

for the subject areas of Agenda 21.<sup>47</sup> During Prepcom III, the Secretariat called for Agenda 21 to become a more extensive action plan, due to the complex recommendations that would be set forth in the treaty on the subject areas of development and the environment.<sup>48</sup>

Prepcom IV was held in New York from March 1992 to April 1992.<sup>49</sup> The primary goal of Prepcom IV, the final meeting before the Summit, was to reach an agreement on the first draft of Agenda 21.<sup>50</sup> Due to differences over funding issues, technology transfers, and commitments to many of the Agenda's sections, an agreement on a first draft was not accomplished before the Rio Summit.<sup>51</sup> However, eighty five percent of Agenda 21's text was completed at Prepcom IV.<sup>52</sup>

At Prepcom IV, the issues involving the conservation of straddling and migratory fish found in Chapter 17, "Protection of the Oceans," could not be resolved.<sup>53</sup> Prepcom IV developed separate working groups to resolve any conflicts within the different subject areas of the Agenda. Working Group II addressed the issues concerning the world's oceans, including the issue of straddling and migratory fish.<sup>54</sup>

When the Rio Summit began on June 2, 1992, ninety-eight percent of Agenda 21 had been completed and approved.<sup>55</sup> UNCED officials hoped to have all negotiations completed before the Summit.<sup>56</sup> Negotiations on the unresolved issues of Agenda 21 were held at the Summit.<sup>57</sup> By

47. *Highlights: Overview of UNCED Process*, *supra* note 38.

48. ROBINSON, *supra* note 30, at xxi.

49. *Highlights: Overview of UNCED Process*, *supra* note 38.

50. *Prepcom IV: Unfinished Agenda*, GLOBAL ENVIRONMENTAL CHANGE REPORT, No. 6, Vol. 41, at 3 (Mar. 27, 1992).

51. *Id.*

52. Joe Kirwin, *Less than \$5 Billion Pledged for Agenda 21 Action Plan; Final Document to be Released by United Nations in September*, 15 Int'l Env'tl. Rep. Current Rep. (BNA) No. 14, at 486 (July 15, 1992).

53. *Highlights: Main Committee*, Greenwire, June 8, 1992, available in LEXIS, Env'tl. Library, News File.

54. Gerald Gray, *Outlook for the Earth Summit*, AMERICAN FORESTS, May-June 1992, at 49.

55. Joe Kirwin, *Nations to Resume Talks on Action Plan at Earth Summit*, Int'l Env'tl. Daily (BNA) (June 5, 1992).

56. *Id.*

57. *Id.*

the end of the Rio Summit on June 14, 1992, the issue of straddling and migratory fish had not been resolved.<sup>58</sup> The dispute was mainly between Canada and the European Community.<sup>59</sup> The United States mediated an agreement that called for an intergovernmental conference to resolve the dispute.<sup>60</sup> The conference was under the auspices of the United Nations and attempted to promote effective implementation of the straddling and migratory fish provisions found in the LOS.<sup>61</sup> As a result of the mediated agreement, Agenda 21 did not resolve the issue involving migratory fish, but merely recommended in Chapter 17 of Agenda 21 that a United Nations conference be held to discuss the issue of straddling and highly migratory fish.<sup>62</sup> The United Nations General Assembly decided that the conference would be held in New York.<sup>63</sup> It also proposed that the conference be held in two sessions in 1993 and be completed by 1994.<sup>64</sup> However, the States involved in the U.N. Conference on Fish Stocks have been unable to reach an agreement and, thus, have scheduled another session for March 27, 1995.<sup>65</sup>

As mentioned earlier, Chapter 17 of Agenda 21 titled "Protecting the Oceans," addresses the issue of straddling and migratory fish. Chapter 17 is divided into seven program areas.<sup>66</sup> Area C calls for the sustainable use and conserva-

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58. *Highlights: Main Committee, supra* note 53. Before the Rio Summit, Canada along with 39 other nations, sponsored proposals for sustainable development of high seas fisheries. *Canada to Host Meeting to Prepare for High Seas Fisheries Conference*, Canada Newswire, Jan. 18, 1993, available in LEXIS, Env'tl. Library, News File.

59. Kirwin, *supra* note 52, at 487. Canada believed the fishing practices of the European Community were decimating its fishing stocks in the North Atlantic. See *infra* notes 171-78 and accompanying text.

60. Kirwin, *supra* note 52, at 487.

61. *Canada to Host Meeting to Prepare for High Seas Fisheries Conference, supra* note 58.

62. *Id.* A proposal to establish this conference is mentioned in Chapter 17.49(e) of Agenda 21.

63. *Id.*

64. *Id.*

65. *U.N. Fish Parley Adjourns After Getting Draft Accord*, Reuter Newswire, Western Europe, Reuter General News, Aug. 26, 1994, available in LEXIS, Env'tl. Library, News File.

66. AGENDA 21, *supra* note 32, at 307-08.

tion of marine living resources of the High Seas.<sup>67</sup> Section 17.45 states that, even with the provisions set out in LOS to protect High Sea fisheries, enforcement and conservation measures are inadequate.<sup>68</sup> Section 17.46 sets forth the objectives of Chapter 17: (a) develop and increase potential marine resource; (b) maintain and restore marine species; (c) promote and develop selective fishing gear; (d) ensure monitoring and enforcement; (e) protect endangered marine species; (f) preserve habitats; and (g) promote scientific research.<sup>69</sup> Section 17.49 establishes the actions that States should take to meet these goals.<sup>70</sup> Some of those actions include: (a) give full effect to the LOS provisions protecting fisheries and straddling stocks; (b) apply these provisions to protect migratory fish stock; (c) negotiate agreements to manage fish stocks; and (e) *convene as soon as possible a conference under United Nation auspices taking up the issue of migratory and straddling fish.*<sup>71</sup>

In response to the conferences on straddling and migratory fish, a draft Agreement was established.<sup>72</sup> This Agreement is based on, and contains, many of the same or similar provisions as those mentioned in Chapter 17 of Agenda 21. For example, Chapter 17.1(c) of Agenda 21 and Part I, Article 2 of the Agreement both call for an agreement to ensure long term conservation and sustainable use of fish stocks.<sup>73</sup> Part II of the Agreement requires States to adopt conservation measures based on the best scientific evidence available and for States to share and promote this information.<sup>74</sup> Similarly, Chapter 17.46(g) of Agenda 21 proposes that States promote scientific research on marine life to assist them in

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67. *Id.* at 326.

68. *Id.*

69. *Id.* at 326-27.

70. AGENDA 21, *supra* note 32, at 328. Section (e) was put in as a result of a dispute over straddling and migratory fish stocks.

71. *Id.* (emphasis added).

72. *Straddling Fish Draft Agreement, supra* note 1.

73. *Id.* pt. I, art. 2; *see also*, AGENDA 21, *supra* note 32, at 307. The actual text of 17.1(c) says the programme area will address "sustainable use and conservation of marine living resources on the high seas." *Id.*

74. *Straddling Fish Draft Agreement, supra* note 1, pt. II, art. 7.

developing conservation programs.<sup>75</sup> Chapter 17.56 outlines the framework for the sharing of data and information on marine life.<sup>76</sup> Chapter 17.65 states how relevant international organizations should develop and share data.<sup>77</sup> Part IV of the Agreement deals with the issues involving the flagging of international ships and how to regulate those flagged ships.<sup>78</sup> Chapter 17.45 of Agenda 21 mentions, as a basis for action, the unregulated activities of re-flagged ships.<sup>79</sup> Part VIII of the Agreement establishes a framework for the settlement of international disputes through a framework of negotiations and mediation.<sup>80</sup> Chapter 17.49 sets forth measures that States should take to resolve conflicts, including convening the conference, obeying provisions of the LOS treaty, and carrying on negotiations.<sup>81</sup>

Due to Agenda 21's framework, and suggestion that a conference be developed, the U.N. Conference on Fish Stocks was firmly established. This conference convened to resolve the issue of migratory and straddling fish and, as a result, established a Straddling Fish Draft Agreement.

### III. The United Nations Draft Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks

The U.N. Conference on Fish Stocks enacted a draft Agreement to implement the provisions of LOS.<sup>82</sup> This Agreement seeks "to ensure the long term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks."<sup>83</sup> The Agreement is divided into nine parts, each subdivided by an article.<sup>84</sup>

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75. AGENDA 21, *supra* note 32, at 327.

76. *Id.* at 330.

77. *Id.* at 332.

78. *Straddling Fish Draft Agreement*, *supra* note 1, pt. IV, art. 17.

79. AGENDA 21, *supra* note 32, at 326.

80. *Straddling Fish Draft Agreement*, *supra* note 1, pt. VIII, arts. 25-31.

81. AGENDA 21, *supra* note 32, at 328.

82. *Straddling Fish Draft Agreement*, *supra* note 1.

83. *Id.* pt. I, art. 2.

84. *Id.*

Part I of the Agreement is entitled general provisions.<sup>85</sup> Under this provision, Article 1 defines the terms and the scope of the Agreement.<sup>86</sup> Article 2 sets forth the objective of the Agreement: to ensure long term conservation and sustainable use.<sup>87</sup> Article 3 states that conservation and management apply beyond national jurisdiction and that coastal States have the obligation to conserve and manage areas under their national jurisdiction.<sup>88</sup>

Part II of the Agreement addresses conservation and management.<sup>89</sup> First, it sets out the requirements for coastal States and for States fishing on the High Seas.<sup>90</sup> Next, the treaty requires States to adopt conservation and management measures.<sup>91</sup> In adopting these measures, States should use the best scientific evidence available in order to maintain or restore stocks at levels capable of producing the maximum sustainable yield.<sup>92</sup> In developing these measures, States should apply the precautionary approach as well as consider the requirements of developing States, the independence of stocks, and the generally recommended international minimum standards.<sup>93</sup> States must adopt measures to encourage conservation and bio-diversity, such as developing safe fishing techniques and promoting and sharing scientific research.<sup>94</sup>

Article 6 of Part II describes the application of the precautionary approach in developing these conservation standards.<sup>95</sup> States and organizations shall apply the precautionary approach directly, through regional and sub-regional fisheries, and shall aim at setting stock specific stan-

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85. *Id.* pt. I, art. 1.

86. *Straddling Fish Draft Agreement*, *supra* note 1, pt. I, art. 1.

87. *Id.* pt. I, art. 2.

88. *Id.* art. 3(1)-(j).

89. *Id.* pt. II, arts. 5-7.

90. *Straddling Fish Draft Agreement*, *supra* note 1.

91. *Id.* pt. II, art. 5(a).

92. *Id.* pt. II, art. 5(b).

93. *Id.* pt. II, art. 5(c)-(j).

94. *Straddling Fish Draft Agreement*, *supra* note 1, pt. II, art. 6(3)(a), (c).

95. *Id.* pt. II, art. 6.

dards using the best scientific information.<sup>96</sup> If the quality of that scientific information is poor, States should be more cautious.<sup>97</sup> The Agreement, under Article 6, goes on to describe the methods considered in applying the precautionary approach.<sup>98</sup>

Article 7 states that conservation and management measures shall be compatible. Thus, it ensures that the viability of the overall fish stocks exist and do not undermine the provisions of the Agreement.<sup>99</sup> If States are unable to reach agreements on compatible measures within a reasonable time, the Agreement provides for provisional agreements and dispute settlement provisions.<sup>100</sup>

Part III of the Agreement discusses the mechanics for cooperation.<sup>101</sup> This process is handled either directly or indirectly through the development of sub-regional and regional fisheries.<sup>102</sup> These sub-regional and regional fisheries shall possess the authority to establish plans for the States to follow.<sup>103</sup> Regional fisheries shall agree on stock measures, the area of application, relationships between new and existing fisheries or arrangements, and mechanisms for obtaining scientific evidence and review of the status of the stock.<sup>104</sup> Regional fisheries must also ensure long term sustainability of fish stocks, adopt standards for responsible fishing operations, and develop enforcement mechanisms.<sup>105</sup> The participating States shall work to strengthen existing sub-regional and regional management organizations.<sup>106</sup>

Part III also discusses the States' duties in collecting and providing information.<sup>107</sup> States shall collect and exchange

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96. *Id.* pt. II, art. 6(2)-(3).

97. *Id.* pt. II, art. 6(2).

98. *Straddling Fish Draft Agreement*, *supra* note 1, pt. II, art. 6(2).

99. *Id.* pt. II, art. 7.

100. *Id.* pt. II, art. 7(4).

101. *Id.* pt. III, arts. 8-16.

102. *Straddling Fish Draft Agreement*, *supra* note 1, pt. III, arts. 8-16.

103. *Id.* pt. III, art. 8(3).

104. *Id.* pt. III, art. 9(a)-(d).

105. *Id.* pt. III, art. 10(c), (e), (h).

106. *Straddling Fish Draft Agreement*, *supra* note 1, pt. III, art. 11.

107. *Id.* pt. III, art. 12.



scientific data, and ensure that this data is collected with sufficient detail to facilitate effective stock assessment.<sup>108</sup> According to Part III, any new members must be examined with respect to the nature and right of their participation in these sub-regional or regional organizations.<sup>109</sup> In evaluating prospective members, existing members must consider such factors as stock level, interests, fishing patterns, contribution to conservation and the interests of developing States.<sup>110</sup>

Part IV of the Agreement deals with the responsibilities of States regarding ships bearing their flags.<sup>111</sup> States shall ensure compliance with organizational measures and be able to effectuate its responsibility with regard to a flag bearing vessel.<sup>112</sup> States should effectuate this procedure through licenses or permits.<sup>113</sup> These license and permit programs should establish national records of fishing vessels, act as identification, and implement information gathering procedures.<sup>114</sup>

Part V of the Agreement establishes a framework for compliance and enforcement of sub-regional organization measures.<sup>115</sup> Under Article 18, a State shall enforce, investigate, and prosecute serious violations.<sup>116</sup> In addition, a State may require a flag bearing vessel to provide evidence where it is believed that the vessel committed a violation.<sup>117</sup> Failure to comply with regional measures will result in cancellation or suspension of permits.<sup>118</sup> Flag States may also initiate an investigation with the cooperation of other interested States.<sup>119</sup> If a fishing vessel does not appear to have a nation-

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108. *Id.* pt. III, art. 12(1)(a), (b).

109. *Id.* pt. III, art. 16.

110. *Straddling Fish Draft Agreement*, *supra* note 1, pt. III, art. 16(a)-(c), (e).

111. *Id.* pt. IV, art. 17.

112. *Id.* pt. IV, art. 17(1)-(2).

113. *Id.* pt. IV, art. 17(3)(a).

114. *Straddling Fish Draft Agreement*, *supra* note 1, pt. IV, art. 17(3)(a)-(e).

115. *Id.* pt. V, arts. 18-20.

116. *Id.* pt. V, art. 18(1)(a), (b), (e).

117. *Id.* pt. V, art. 18(1)(d).

118. *Straddling Fish Draft Agreement*, *supra* note 1, pt. V, art. 18(2).

119. *Id.* pt. V, art. 19(2).

ality, any State may undertake reasonable measures to board and inspect that ship.<sup>120</sup>

Port States shall comply with international laws to promote the effectiveness of sub-regional and regional measures without any discrimination.<sup>121</sup> A port State may inspect the catch, records, and equipment on ships in its ports.<sup>122</sup> However, where there are reasonable grounds to suspect that a violation exists, the port State shall inform the vessel's flag State and request the flag State to take control of the vessel.<sup>123</sup> If the flag State is unable to take control, the port State may temporarily board the vessel.<sup>124</sup>

The Agreement further discusses special rules regarding the treatment of developing States.<sup>125</sup> First, States shall support developing States and must consider their special needs.<sup>126</sup> Next, States must cooperate to improve the developing State's ability to participate in the Agreement.<sup>127</sup> Some of these measures include the establishment of voluntary funds, transfer of technology, financial assistance, and transfer of human resources.<sup>128</sup>

Part VIII establishes the framework for the peaceful settlement of disputes between nations.<sup>129</sup> This framework establishes obligations to settle disputes by negotiation and mediation.<sup>130</sup> When these measures fail, ad hoc technical panels would settle technical disputes.<sup>131</sup> The regional and sub-regional organizations shall strengthen and adopt procedures to settle disputes that are not technical in nature.<sup>132</sup>

Part IX of the Agreement does not discharge nonparticipants in sub-regional and regional agreements from their ob-

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120. *Id.* pt. V, art. 20(3).

121. *Id.* pt. VI, art. 21(1).

122. *Straddling Fish Draft Agreement*, *supra* note 1, pt. VI, art. 21(2).

123. *Id.* pt. VI, art. 21(3).

124. *Id.* pt. VI, art. 21(4).

125. *Id.* pt. VII, arts. 22-24.

126. *Straddling Fish Draft Agreement*, *supra* note 1, pt. VII, art. 22.

127. *Id.* pt. VII, art. 23.

128. *Id.* pt. VII, art. 23.

129. *Id.* pt. VIII, arts. 25-31.

130. *Straddling Fish Draft Agreement*, *supra* note 1, pt. VIII, art. 25.

131. *Id.* pt. VIII, art. 27.

132. *Id.* pt. VIII, art. 29.

ligation to conserve and manage relevant stocks.<sup>133</sup> However, nonparticipating States cannot authorize vessels flying their flag to operate in areas subject to the Agreement.<sup>134</sup> A member State shall also share information with a nonparticipant and deter activities by such nonparticipants, which would undermine the effectiveness of the Agreement.<sup>135</sup>

Part X requires States not to abuse their rights under the treaty.<sup>136</sup> Part XI encourages non-parties to adopt the Agreement.<sup>137</sup> Part XII determines when the United Nations will review the effectiveness of this Agreement.<sup>138</sup> This section also provides that States, sub-regional, and regional organizations, must report biannually to the United Nations on the implementation of this Agreement.<sup>139</sup> Additionally, four years after the adoption of this Agreement, the Secretary General must convene a conference to assess the effectiveness of this Agreement.<sup>140</sup> This conference shall review the adequacy of the provisions and, if necessary, propose means to strengthen the substance and methods of implementing the Agreement.<sup>141</sup>

People did not expect the international community to formulate a Convention so quickly and to continue to meet on a regular basis. Four sessions have been held during the course of the past two years, with the last convening in August 1994. Two further sessions were scheduled for 1995. Ideally, these sessions should be very productive and lead to a resolution of the fragmentation beyond the 200 mile EEZ.

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133. *Id.* pt. IX, art. 32(1).

134. *Straddling Fish Draft Agreement*, *supra* note 1, pt. IX, art. 32(2).

135. *Id.* pt. IX, art. 32(3).

136. *Id.* pt. X, art. 33.

137. *Id.* pt. XI, art. 34.

138. *Straddling Fish Draft Agreement*, *supra* note 1, pt. XII, art. 36.

139. *Id.* pt. XII, art. 35(1).

140. *Id.* pt. XII, art. 36(1).

141. *Id.* pt. XII, art. 36(2).

## IV. Analysis

The urgency for concluding the U.N. Conference on Fish Stocks has increased. Recently, World Watch Institute stated that “[a]ll the world’s major fishing grounds are at or beyond their limits, and many have already suffered serious declines.”<sup>142</sup> Presently, “there are 15 major marine fishing regions and the productivity of fish in all but two have fallen.”<sup>143</sup> The Atlantic fisheries have experienced the biggest drops, but the Mediterranean and Pacific have also experienced large losses due to neglected fisheries.<sup>144</sup> Only universal fisheries, such as the Indian Ocean fisheries, are still increasing, “although they are unlikely to expand much more and could be poised for serious declines.”<sup>145</sup>

These declines have given rise to international conflicts among fishing States. World Watch identified conflicts in the Northwest Atlantic on the Grand Banks of Newfoundland, the Northeast Atlantic in the loophole, in tuna fisheries throughout the Atlantic, in the Southwest Atlantic on the Patagonia Shelf, off the West Coast of Africa, in the North Pacific, in the Donut Hole and Peanut Hole, Russia, and Southeast Asia.<sup>146</sup> It is only a matter of time before these conflicts cause serious injury and loss of life. The press recently reported shootings between fishery vessels of different nations in the Northeast Atlantic and in the Bay of Biscay.<sup>147</sup>

Canada is one member of the community who has suffered serious resource declines. For example, in 1497, when Italian explorer John Cabot entered Canadian waters near the province of St. John’s under the English flag, the cod fish schools were so thick that his crew had difficulty rowing

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142. PETER WEBER, NET LOSS: FISH, JOBS, AND THE MARINE ENVIRONMENT 13 (Carole Douglas ed., World Watch Institute 1994).

143. *Id.*

144. *Id.*

145. *Id.*

146. WEBER, *supra* note 142, at 51.

147. See Chris Wood, Sharon Doyiz Driedger, & Warren Caragata, *Who Owns The Sea*, MACLEAN’S, Mar. 27, 1995; Bronwen Maddox, *Fleets Fight In Over-fished Waters: Fishing Disputes Have Risen Up The Diplomatic Agenda*, FIN. TIMES, Aug. 30, 1994; Jean-Louis Doublet, *Declining Fish Stocks Means Disputes Will Grow*, AGENCE FRANCE PRESSE, Mar. 16, 1995.

through the sea of fish.<sup>148</sup> In the late 1980s, "the spawning population [of cod] in these waters was estimated at more than 1 million tonnes."<sup>149</sup> In 1985, Atlantic fishermen hauled in 635,000 tonnes of cod.<sup>150</sup> However, by 1992, the quantities of fish along the Canadian coast had severely declined to 400,000.<sup>151</sup> In 1993, the Canadian government was forced to limit the Atlantic cod catch to 140,000 tonnes.<sup>152</sup> However, the productivity of codfish has further plummeted to an estimated 15,000 tonnes in 1994.<sup>153</sup>

Cod fishing has been the "economic and spiritual sustenance" of Canadian existence.<sup>154</sup> The collapse of the Canadian cod and the groundfish industry has placed nearly 50,000 fishermen and plant workers out of work.<sup>155</sup> The demise of the Canadian cod fishing industry has been attributed to the proliferation of small, young fish; abuse and overfishing along with mismanagement by Canada and the European Community;<sup>156</sup> seal infestation;<sup>157</sup> and changes in water temperatures and fish-migration patterns.<sup>158</sup> As a result of

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148. Craig Turner, *Doing Business Canada Makes Waves With Fishing Restrictions*, L.A. TIMES, Oct. 18, 1994, at 3.

149. David Osborne, *Empty Seas Lash Newfoundland, Cod 'Pirates' and Factory Ships Have Robbed a Canadian Community of its Centuries-old Way of Life*, THE INDEPENDENT, May 1, 1994, at 15.

150. Anne Swardson, *Canada Closes Section of Atlantic to Fishing 12,000 Expected to Lose, Jobs Dwindling Supply of Cod Leaves Scientist Mystified*, WASH. POST, Sept. 1, 1993, at A26.

151. *Canadian Fish Stocks Decimated; Canada Itself Shares the Blame*, QUICK FROZEN FOODS INTERNATIONAL, Jan. 1994, available in WESTLAW, Magsplus Database [hereinafter QUICK FROZEN FOODS INTERNATIONAL].

152. Swardson, *supra* note 150, at A26.

153. Osborne, *supra* note 149, at 15.

154. *Id.*

155. QUICK FROZEN FOODS INTERNATIONAL, *supra* note 151, at 70.

156. Limitation quotas set by the North Atlantic Fisheries Organization (NAFO), of which the European Community (EC) is a member, were ignored. According to Brian McNamara, President of Newfoundland Resources Ltd., "[b]etween 1986 and 1992, fishing fleets from the EC—particularly Spain and Portugal—reported cod catches more than five times the level of their NAFO quotas." QUICK FROZEN FOODS INTERNATIONAL, *supra* note 151, at 70.

157. William Claiborne, *Canada Cuts Cod Harvest, Acts to Spur Seal Hunt North Atlantic Fish Stocks Endangered by Expanding Animal Herd, Officials Declare*, WASH. POST FOREIGN SERVICE, Feb. 25, 1992, at A12.

158. Bernard Simon, *Canadian Cod Fishery Faces Virtual Shut-Down*, FIN. TIMES, Dec. 21, 1993, at 22.

the dwindling number of cod fish, Canada's Minister of Fisheries, Brian Tobin, fiercely lobbied for a ban on the harvesting of cod from the southern Grand Banks of Newfoundland.<sup>159</sup>

In July 1992, the Canadian government imposed a two-year moratorium on cod fishing to preserve the depleting remnants of a once rich economic resource.<sup>160</sup> This moratorium banned the fishing of cod off Newfoundland's Grand Bank, the Canadian province most affected by the depletion of the northern cod.<sup>161</sup> In 1994, Canada extended the ban for an additional five years and gave itself the legal authority to seize foreign fishing vessels outside of its 200 mile EEZ.<sup>162</sup> Consequently, only a small proportion of Canadian waters remain open for fishing cod.<sup>163</sup> As mentioned earlier, this predicament has not only occurred in Newfoundland.<sup>164</sup> United Nations studies suggest that 60% of the world's fishing resources are on the verge of decline.<sup>165</sup>

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159. NAFO: *Canadians Seek Cod Fishing Ban for Southern Grand Banks*, EUROPEAN INFORMATION SERVICE EUROPEAN REP., Feb. 16, 1994, available in WESTLAW, Wire File [hereinafter EUROPEAN INFORMATION SERVICE].

160. *Id.* The severe decline of cod fish stock on Canada's province of Newfoundland's Grand Banks, extending east and south into the Atlantic, has resulted in subsequent economic degradation of it. Usborne, *supra* note 149, at 15.

161. Mary Williams Walsh, *Daily Briefing Ecological Fiasco Destroying Newfoundland Codfish*, S.F. CHRON., July 22, 1991, at E6. The citizenry of Newfoundland depend upon the cod fish for their livelihoods and prosperity. Although the outlook remains gloomy for cod and groundfish, McNamara reported that the Canadian seafood industry is not extinct. QUICK FROZEN FOODS INTERNATIONAL, *supra* note 151, at 70. Promising quantities of surf clams and scallops exist. In 1993, snow crab landings reached 45,000 tonnes; *Pandalus borealis* shrimp landings exceeded 40,000 tonnes; redfish catches were estimated at 155,000 tonnes. *Id.* In addition, the harvesters can profit from the sale of halibut, salmon, herring, mackerel, shrimp, lobster and other valuable species. *Id.* Despite the availability of other species of fish, Newfoundland's economy is almost entirely dependent on the once-teeming fishing grounds and cod was the most important species that accounted for more than half of the total catch. Colin Nickerson, *Harvest of Despair as Supply of Cod Falls, Some in Newfoundland Turn to Drug-Running*, BOSTON GLOBE, Nov. 8, 1993.

162. Stephan Savoia, *A Way of Life Disappearing With the Cod*, Associated Press, July 17, 1994, at 23.

163. Swardson, *supra* note 150, at A26.

164. Usborne, *supra* note 149, at 15.

165. *Id.*

The impact of the 1992 Moratorium, on the increase in fish, is dubious.<sup>166</sup> The Moratorium has economically devastated the livelihoods of 30,000 people in Newfoundland, which resulted an estimated unemployment rate of 80%.<sup>167</sup> Such unemployment, caused by the dwindling fish stocks and government subsidized households, has become a way of life for the already impoverished citizens of Newfoundland.<sup>168</sup> In recognition of the poor long-term prospects for the fishing industry, the government has undertaken a program designed to encourage fish workers to find jobs in other sectors of the economy.<sup>169</sup> Indeed, fishermen are fighting for their livelihoods.<sup>170</sup>

Despite the Canadian Moratorium's goal to preserve the rapidly depleting supply of northern cod from extinction and its provinces from economic depression, the decline of cod has not ceased.<sup>171</sup> The state of straddling stocks of cod, those which inhabit the boundary zone between national and international waters, is still at issue.<sup>172</sup> The 1992 Canadian Moratorium applies only to Canada's 200 mile EEZ (its national waters).<sup>173</sup> According to Brian Tobin, data from a Canadian survey during the Autumn of 1993 "shows a significant stock decline in 1993."<sup>174</sup> Nonetheless, the Northwest Atlantic Fisheries Organization (NAFO)<sup>175</sup> has set a 6,000 tonne total

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166. Swardson, *supra* note 150, at A26.

167. Osborne, *supra* note 149, at 15.

168. Turner, *supra* note 148, at 3. "The government has spent more than \$1 billion in Canadian funds (about \$730 million U.S.) on relief and compensation and promised \$1.9 billion (\$1.39 billion U.S.) more over the next five years." *Id.*

169. Simon, *supra* note 158, at 22.

170. Patricia Reaney, *UK: Greenpeace Calls for Protection of Fish Stocks*, Reuter Newswire, Aug. 15, 1994, available in LEXIS, Env'tl. Library, News File. Faced with the harsh reality of economic ruin because of the catastrophic decline of North Atlantic cod, many unemployed fishermen have gone to the extreme to meet the challenge of supporting their families by smuggling illicit cargos of cigarettes and liquor. Nickerson, *supra* note 161.

171. Walsh, *supra* note 161, at E6.

172. EUROPEAN INFORMATION SERVICE, *supra* note 159.

173. *Id.*

174. *Id.*

175. NAFO manages fish stocks in the Northwest Atlantic Ocean straddling Canada's 200 nautical mile limit. NAFO comprises fourteen contracting parties. The parties are Bulgaria, Canada, Cuba, Denmark (for the Faroe Islands

allowable catch (TAC) for cod fish.<sup>176</sup> Although there has been an inexorable decline in TAC for cod from 40,000 tonnes in 1988 to 6,000 tonnes in 1994, Canada seeks to have the NAFO imposed limit suspended.<sup>177</sup> According to Mr. Tobin, “. . . we will try to get a corresponding international moratorium. We need to ensure the best protection for this stock, both inside and outside the Canadian 200 mile zone.”<sup>178</sup> Mr. Tobin, consequently, sought a NAFO Moratorium on the harvesting of southern Grand Banks cod.<sup>179</sup> Yet, one does not know when the fish will return, which would allow towns dependent on fishing to begin recovering economically.

In November 1993, the U.N. Food and Agriculture Organization (FAO), approved a flagging agreement for fishing vessels on the High Seas.<sup>180</sup> It will enter into force with 25 signatures. On May 20, 1994, Canada approved and issued

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and Greenland), Estonia, the European Union, Iceland, Japan, Latvia, Lithuania, Norway, Poland, Romania and Russia. EUROPE INFORMATION SERVICE, *supra* note 159. NAFO was founded in 1979. *NAFO to Discuss Canadian Demand to Protect Cod Stocks*, THE REUTER EUROPEAN COMMUNITY REP., Feb. 4, 1994, available in LEXIS, Envtl. Library, News File.

176. *Id.* In September 1993, NAFO approved a total allowable catch of 6,000 tonnes for cod. Canada Newswire, Feb. 10, 1994, available in LEXIS, Envtl. Library, News File.

177. EUROPE INFORMATION SERVICE, *supra* note 159.

178. *Id.*

179. *Id.* NAFO held an emergency meeting in Brussels on February 15-17 to consider a Canadian request to lower cod quotas and tighten fishing controls in the Grand Banks that straddle Canada's 200-mile limit. The meeting was chaired by the European Commission and examined new scientific evidence that cod stocks continued to decline and that the 6,000 tonnes total allowable catch for 1994 should be lowered. *NAFO to Discuss Canadian Demand to Protect Cod Stocks*, THE REUTER EUROPEAN COMMUNITY REP., Feb. 4, 1994.

180. *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, Food and Agriculture Organizations of the United Nations, Nov. 24, 1993, 33 I.L.M. 968 (1994). This agreement provides:

[T]he practice of flagging or re-flagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfill their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures.

Realizing that the objective of this agreement can be achieved through specifying flag States' responsibility with respect to fishing vessels entitled to fly their flags and operate on the high seas, in-



an acceptance of the agreement. The Five Year Agreement provides that the parties must ensure that vessels entitled to fly their flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.<sup>181</sup> It also provides that parties must take enforcement measures in respect of such vessels.<sup>182</sup>

## V. Conclusion

It is against and because of this factual and legal background, that there exists an overwhelming need to conclude the U.N. Conference on Fish Stocks as well as assess its progress. Mechanisms must be developed to allow fisheries conservation measures to be put in place. The government must notice straddling and migratory fish stocks in the water adjacent to the 200 mile zone. Measures must be consistent with measures taken in waters subject to national jurisdiction. The measures established outside the 200 mile limit must not undermine those established within the 200 mile EEZ. Therefore, consistency inside and outside the EEZ is needed. The U.N. Conference on Fish Stocks should provide this consistency along with a program to enforce all the conservation provisions. In the near future, the agreement will be completed and conservation and use of the world's species of fish will be at optimum levels for all to enjoy.

## Addendum I

The final agreement is similar to the draft agreement; however, it contains specific language that is not found in the draft agreement and a couple of new articles. Some of the important additions to the final agreement include:

- Article 1, the definitions of "convention and management measures," "fish," and "arrangement";

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cluding the authorization by the flag State, as well as through the exchange of information on the high seas.

*Id.* at pml.

181. *Id.* at art. III(1)(a).

182. *Id.* at art. III(1)(b).

- Article 3's mention of giving due consideration to the capacities of developing states;
- Article 4's mention of "nothing in the agreement shall prejudice the rights, jurisdiction and duties of States under the Convention";
- Article 5(d) assessing the impact of fishing and (i) take into account the interests of artisanal and subsistence fishers;
- Article 6(7) discussing that if a natural phenomenon adversely impacts straddling and migratory fish, then conservation shall be done on an emergency basis;
- Article 7(b) and (c) take into account previously agreed measures by relevant coastal States, sub-regional and regional fisheries management and (7) and (8) suggest to regularly notify States of measures adopted in the State's national jurisdiction and to regulate the activities of vessels flying their flag;
- Article 16(2) stating that States shall act in good faith and without delay in agreeing to conservation and management measures and if not, the States shall apply Article 7(4), (5), and (6) relating to provisional measures;
- Article 20(6) discusses that if there is unauthorized fishing in a coastal State's jurisdiction, then the flag State shall investigate and cooperate with the coastal State and (7) use international law to deter vessels which have engaged in activities that undermine or violate conservation measures;
- Article 21 (previously Article 20), which mentions sub-regional and regional cooperation, has been completely changed;
- Article 22, basic boarding and inspection procedures pursuant to Article 21, is a new Article;
- Article 23(3) stating port States shall adopt regulations to prohibit landings and transshipments of species which are taken in an improper manner;
- Article 30 discussing the settlement of disputes (previously Article 28)(1), (2), and (3) are different and section (4), discussing non-parties using article 287 or arbitration to settle disputes, and section (5), stating that the tribunal which is hearing the case must apply relevant provisions of the Convention, this Agreement, different fisheries arrangements,

accepted conservation measures and international law, are new;

- Article 35, responsibility and liability, is new;
- The contents of Articles 37-40 dealing with signature, ratification, accession, and entry into force are different;
- Article 41 discussing provisional application is new;
- Article 47 discussing participation by international organizations is new;
- The contents of Annex I and II are the same, but the sections are broken down differently.