



GENERAL FISHERIES COMMISSION FOR
THE MEDITERRANEAN
COMMISSION GÉNÉRALE DES PÊCHES
POUR LA MÉDITERRANÉE



GFCM Extraordinary Session

Athens, Greece, 7–9 April 2014

DRAFT AMENDED GFCM AGREEMENT

Background

This document reproduces, on the basis of the current GFCM Agreement, the proposed amendments suggested by the “Task Force - Working Group on the Amendment of the GFCM Legal Framework”, which met in Istanbul, Turkey, on 19-21 February 2014.

In the draft amended GFCM Agreement hereunder: (i) text which is new is underlined and in bold; (ii) text which should be deleted from the current GFCM Agreement appears in strikethrough; and (iii) text which was placed under reservation is between square brackets. In addition, where more options were presented at Istanbul they are all reproduced under the relevant draft articles and some details are provided under “N.B.”. Any other proposal, including for the amendment of current provisions or the inclusion of new provision, is expected to be put forth directly at the GFCM Extraordinary Session.

Action to be taken

The Commission may wish to:

- (i) examine the revised draft amended GFCM Agreement and use it as a basis for consultations and negotiations in view of its endorsement/adoption;
- (ii) make appropriate recommendations on next steps to be followed.

**DRAFT AMENDED AGREEMENT FOR THE ESTABLISHMENT OF
THE GENERAL FISHERIES COMMISSION FOR THE
MEDITERRANEAN [AND THE BLACK SEA]**

PREAMBLE

The Contracting Parties,

~~Taking account of the **Recalling** international law as reflected in relevant provisions of the United Nations Convention on the Law of the Sea which entered into force on 16 November, 1994 (hereafter referred to as the United Nations Convention) and which requires all members of the international community to cooperate in the conservation and management of the living marine resources of 10 December 1982,~~

Further recalling the Agreement for the Implementation of the Provisions of the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993, as well as other relevant international instruments concerning the conservation and management of living marine resources,

~~Noting also the objectives and purposes stated in Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development, 1992 and **Taking into account** the Code of Conduct for Responsible Fisheries adopted by the Food and Agriculture Organization Conference **at its twenty eighth session on 31 October 1995, and related instruments adopted by the FAO, [including the FAO “Technical Guidelines on Sustainable Small Scale Fisheries”]**, Noting also that other international instruments have been negotiated concerning the conservation and management of certain fish stocks,~~

N.B. The text between square brackets would be included only if the Guidelines are adopted by the FAO before the amended GFCM Agreement is adopted by the Commission.

[Acknowledging the specificities of the different sub-regions in the Mediterranean Sea and the Black Sea],

[Determined to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems of the Mediterranean Sea and the Black Sea],

[Recognizing the economic and social benefits deriving from the sustainable use of living marine resources of the Mediterranean, the Black Sea and connecting waters,]

[Further recognizing that under international law States are required to cooperate in the conservation and management of living marine resources and the protection of their ecosystems,]

[Affirming that aquaculture plays an important role in the promotion and better use of living marine resources, including food security.]

[Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of use and farming of living marine resources.]

[Mindful that effective conservation and management must be based on the best scientific information available and on the application of the precautionary approach.]

[Aware of the importance of coastal fishing communities and of the need to involve fishermen organizations and civil society organizations in decision-making processes.]

[Determined to cooperate effectively to prevent, deter and eliminate illegal, unreported and unregulated fishing.]

[Recognizing the special requirements of developing States to allow them to participate effectively in the conservation, management and farming of living marine resources.]

~~[Having a mutual interest in the development and proper utilization of~~ Convinced that the conservation and sustainable use of the living marine resources in the Mediterranean [and the Black Sea] ~~(hereafter referred to as the Region)~~ and the protection of the marine ecosystems in which those resources occur, plays a major role in the context of blue growth and sustainable development]

N.B. All references to the final name of the Commission throughout the text would be provided once a definitive decision is taken.

~~desiring to further the attainment of their objectives through international cooperation which would be furthered by the establishment of a~~ Recognizing the need to establish for these purposes the General Fisheries Commission for the Mediterranean [and the Black Sea] within the framework of Food and Agriculture Organization, under Article XIV of its Constitution,

~~Recognizing the importance of fisheries conservation and management in the Region and of promoting cooperation to that effect,~~

Have agreed as follows:

Article 1 (USE OF TERMS)

1. For the purposes of this Agreement:

- (a) “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;
- (b) “1995 Agreement” means the Agreement for the Implementation of the Provisions of the United 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 of 4 December 1995;
- (c) [“aquaculture” means the farming of [aquatic living] fishery resources;]

N.B. The definition of aquaculture and that of some other terms in this article should be further revised.

- (d) “Contracting Party” means any State and regional economic integration organization comprising the Commission pursuant to Article 4;
- (e) “fishing” means searching for, attracting, locating, catching, taking or harvesting of living marine resources or any activity which can reasonably be expected to result in attracting, locating, catching, taking or harvesting of living marine resources;
- (f) “fishing related activities” means any operation in support of, or in preparation for fishing activities, including landing, packaging, processing, transshipping or transporting of fish, as well as provisioning of personnel, fuel, gear and other supplies;
- (g) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- (h) “maximum sustainable yield” means the highest theoretical equilibrium yield that can be continuously taken (on average) from a stock under existing (average) environmental conditions without affecting significantly the reproduction process;
- (i) “straddling stocks” means stocks which occurs both within the exclusive economic zones and in an areas beyond and adjacent to the exclusive economic zones;
- (j) [“vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.]

N.B. At the Working Group on the Amendment of the GFCM Legal Framework a proposal was made concerning the possibility to refer in this article to the FAO and GFCM glossaries in order to have technical terms defined according to these tools, in light of the fact that these tools are regularly updated and approved by the Commission. On the other hand, terms having an institutional and legal nature should be defined in this article.

Article 2 (OBJECTIVE)

1. The Contracting Parties hereby establish within the framework of the Constitution of the Food and Agriculture Organization (hereafter, "FAO"/"the Organization") a Commission to be known as the General Fisheries Commission for the Mediterranean [and the Black Sea] (hereinafter referred to as "the Commission"), for the purpose of exercising the functions and discharging the responsibilities set out in this Agreement ~~forth in Article III below.~~

[2. ~~The purpose of the Commission shall be to promote the development,~~ The objective of the Agreement is to ensure the conservation rational management and best utilization and sustainable use, [at biological, social, economic and environmental level] of living marine resources, as well as the sustainable development of aquaculture in the Region Agreement Area].

3. ~~The seat~~ The Headquarters of the Commission shall be in Rome, Italy. ~~at the headquarters of the Organization in Rome, or such other location as may be determined by the Commission.~~

Article 3 (AREA OF APPLICATION)

1. The geographical area of application, hereafter the "Agreement Area", comprises all marine waters of the Mediterranean Sea, the Black Sea and connecting waters.

2. Nothing in this Agreement, nor any act or activity carried out in pursuance of this Agreement, shall constitute recognition of claims or positions of any Contracting Party concerning legal status and extent of waters and zones by any such Contracting Party.

Article 4 (MEMBERSHIP)

1. ~~The Members of~~ Membership in the Commission shall be open to such Members and Associate Members of the FAO and such non-member States as are members of the United Nations, any of its Specialized Agencies [~~or the International Atomic Energy Agency~~],

(a) that are:

(i) coastal States or Associate Members situated wholly or partly within the Region;

[(ii) States or Associate Members whose vessels engage in fishing in the Region Agreement Area for stocks covered by this Agreement; or]

N.B. The Working Group on the Amendment of the GFCM Legal Framework was informed that the delegations of Algeria and EU would consider to submit a proposal to amend Article 1(a)(ii).

(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;

(b) and that accept this Agreement in accordance with the provisions of paragraph **1 of Article 23 below**.

~~Article XIII below, it being understood that these provisions shall not affect the membership status in the Commission of such States that are not members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency as may have become parties to this Agreement prior to 22 May 1963. As regards Associate Members, this Agreement shall, in accordance with the provisions of Article XIV.5 of the Constitution and Rule XXI.3 of the General Rules of the Organization, be submitted by the Organization to the authority having responsibility for the international relations of such Associate Members.~~

2. For the purposes of this Agreement, the term “whose vessels” in relation to a Contracting Party regional economic integration organization means vessels of a Member State of such Contracting Party regional economic integration organizations.

Article 5 (GENERAL PRINCIPLES)

~~1. The purpose of the Commission shall be to promote the development, conservation, rational management and best utilization of living marine resources, as well as the sustainable development of aquaculture in the Region~~ **In giving effect to the objective of this Agreement, the Commission shall:**

[OPTION 1 (draft tabled at the Working Group on the Amendment of the GFCM Legal Framework):

- (a) **promote sustainable capture fisheries and aquaculture and optimum utilization of living marine resources;**
- (b) **formulate, in accordance with Article 8(b), appropriate measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;**
- (c) **apply the precautionary approach in accordance with the 1995 Agreement and the Code of Conduct;**
- (d) **aim at eradicating hunger, fostering sustainable development and fighting poverty;**
- (e) **take due account of the impact of fishing activities on other species and marine ecosystems and in doing so, adopt measures to minimize harmful impacts;**
- (f) **take due account of the need to preserve marine biological diversity and its related marine ecosystems;**

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- (g) prevent overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with sustainable use of living marine resources;
 - (h) take due account of the need to minimize pollution as well as discards, catch by lost or abandoned gear, catch of species not subject to a directed fishery and impacts on associated or dependent species;
 - (i) consider aquaculture, including culture-based fisheries, as a means to promote diversification of income and diet and in so doing ensure that living marine resources are used responsibly, genetic diversity is conserved and adverse impacts on the environment and local communities are minimized;
 - (j) foster, as appropriate, a sub-regional approach to fisheries management and aquaculture development in order to better address the specificities of the Mediterranean and the Black Sea;
 - (k) carry out such other activities as may be necessary for the Commission to achieve its principles as defined above.]

[OPTION 2 (proposal by the EU):

- (a) adopt [binding recommendations] aimed at ensuring the long term sustainability of fishing activities, in order to preserve the marine living resources, the economic and social viability of fisheries, and aquaculture; in adopting such recommendations, the Commission gives particular attention to the potential impact on small-scale fisheries and local communities
- (b) formulate, in accordance with Article 8(b), appropriate measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;
- (c) apply the precautionary approach in accordance with the 1995 Agreement and the Code of Conduct;
- (d) take appropriate measures to prevent overfishing and excess fishing capacity, and ensure that levels of fishing effort do not exceed those commensurate with sustainable use of living marine resources;
- (e) take due account of the need to minimize discards, catch by lost or abandoned gear, incidental catches and impacts on associated or dependent species;
- (f) consider aquaculture, including culture-based fisheries, as a means to promote diversification of income and diet and in so doing ensure that living marine resources are used responsibly, genetic diversity is conserved and adverse impacts on the environment and local communities are minimized;
- (g) foster, as appropriate, a sub-regional approach to fisheries management and aquaculture development in order to better address the specificities of the Mediterranean and the Black Sea;

- (h) **take the appropriate measures to ensure compliance with its [recommendations] taken by the Commission to deter and eradicate IUU activities; and**
- (i) **carry out such other relevant activities as may be necessary for the Commission to achieve its principles as defined above]**

[OPTION 3 (Proposal by Turkey):

- (a) **promote to ensure the long term sustainability of fishing activities, in order to preserve the marine living resources, the economic and social viability of fisheries, and aquaculture with particular attention to small-scale fisheries and local communities;**
- (b) **formulate, in accordance with Article 8(b), appropriate measures based on the best scientific advice available, taking into account relevant environmental, economic and social factors;**
- (c) **apply the precautionary approach in accordance with relevant internationally agreed standards and recommended practices and procedures;**
- (d) **consider aquaculture, including culture-based fisheries, as a means to promote diversification of income and diet and in so doing ensure that living marine resources are used responsibly, genetic diversity is conserved and adverse impacts on the environment and local communities are minimized;**
- (e) **foster, as appropriate, a sub-regional approach to fisheries management and aquaculture development in order to better address the specificities of the Mediterranean and the Black Sea;**
- (f) **take appropriate measures to prevent, deter and eliminate IUU activities;**
- (g) **promote transparency in its decision making processes and other activities; and**
- (h) **carry out such other relevant activities as may be necessary for the Commission to achieve its principles as defined above.]**

Article 6 (THE COMMISSION)

1. Each Contracting Party shall be represented at sessions of the Commission by one delegate, who may be accompanied by an alternate and by experts and advisers. Participation in meetings of the Commission by alternates, experts, and advisers shall not entail the right to vote, except in the case of an alternate who is acting in the place of a delegate during his absence.

2. Subject to paragraph 3, each Contracting Party shall have one vote. Decisions of the Commission shall be taken by a majority of the votes cast, except as otherwise provided by this Agreement. A majority of the total membership of the Commission shall constitute a quorum.

3. A regional economic integration organization that is a Contracting Party to the Commission shall be entitled to exercise in any meeting of the Commission or of any subsidiary body of the Commission a number of votes equal to the number of its Member States that are entitled to vote in such meeting.

4. A regional economic integration organization that is a Contracting Party to the Commission shall exercise its membership rights on an alternative basis with its member States that are Contracting Parties to the Commission in the areas of their respective competence. Whenever a Regional Economic Integration Organization that is a Contracting Party to the Commission exercises its right to vote, its Member States shall not exercise theirs, and conversely.

5. Any Contracting Party to the Commission may request a regional economic integration organization that is a Contracting Party to the Commission or its Member States that are Contracting Parties to the Commission to provide information as to which, as between the Contracting Party Regional Economic Integration Organization and its Member States, has competence in respect of any specific question. The regional economic integration organization or the Member States concerned shall provide this information on such request.

6. Before any meeting of the Commission or a subsidiary body of the Commission, a regional economic integration organization that is a Contracting Party to the Commission, or its Member States that are Contracting Parties to the Commission shall indicate which, as between the regional economic integration organization and its Member States, has competence in respect to any specific question to be considered in the meeting and which, as between the regional economic integration organization and its Member States, shall exercise the right to vote in respect of each particular agenda item. Nothing in this paragraph shall prevent a regional economic integration organization that is a Contracting Party to the Commission or its Member States that are Contracting Parties to the Commission from making a single declaration for the purposes of this paragraph, which declaration shall remain in force for questions and agenda items to be considered at all subsequent meetings subject to such exceptions or modifications as may be indicated before any individual meeting.

7. In cases where an agenda item covers both matters in respect of which competence has been transferred to the regional economic integration organization and matters which lie within the competence of its Member States, both the regional economic integration organization and its Member States may participate in the discussions. In such cases the meeting, in arriving at its decisions, shall take into account only the intervention of the Contracting Party which has the right to vote.

8. For the purpose of determining a quorum of any meeting of the Commission, the delegation of a regional economic integration organization that is a Contracting Party to the Commission shall be counted to the extent that it is entitled to vote in the meeting in respect of which the quorum is sought.]

N.B. The Working Group on the Amendment of the GFCM Legal Framework was informed that the EU would need to carefully assess internally the issue of competence (Member States vis-à-vis regional economic integration organization) before taking a final decision on the on paragraphs 1-8.

9. The principle of cost-effectiveness shall apply to the frequency, duration and scheduling of sessions and other meetings and activities held under the auspices of the Commission.

Article 7 (THE BUREAU)

1. The Commission shall elect a ~~Chairman and two Vice-Chairmen~~ **Chairperson and two Vice-Chairpersons** by a two-third majority. **The three shall constitute the Bureau of the Commission which will operate in accordance with the terms of reference set out in the Rules of Procedure.**

~~The Chairman of the Commission shall normally convene a regular session of the Commission every year unless otherwise directed by a majority of the Members. The site and date of all sessions shall be determined by the Commission in consultation with the Director-General of the Organization.~~

N.B. The Working Group on the Amendment of the GFCM Legal Framework suggested that only a general reference is made to the establishment of the Bureau whereas provisions concerning its functions and operations should be developed in the Rules of Procedure.

Article 8 (FUNCTIONS OF THE COMMISSION)

1. **In accordance with its objectives and general principles, the Commission shall exercise the** following functions and responsibilities:

[OPTION 1 (draft tabled at the Working Group on the Amendment of the GFCM Legal Framework):

(a) regularly review the state of living marine resources; ~~to keep under review the state of these resources, including their abundance and the level of their exploitation, as well as the state of the fisheries based thereon;~~

(b) **formulate and recommend, in accordance with the provisions of Article V Article 13,** appropriate measures **at regional and sub-regional level,** including:

(i) for the conservation and rational management of living marine resources **found in the Agreement Area;**

(ii) **to minimize impacts for fishing activities on living marine resources and their ecosystems;** ~~regulating fishing methods and fishing gear; prescribing the minimum size for individuals of specified species;~~

(iii) **to establish** ~~open and closed fishing seasons and~~ **fishing restricted** areas [and, in collaboration with other relevant international organizations, marine protected areas];

(v) **to adopt measures for the collection, submission, verification, storing and dissemination of data and information, consistent with relevant data confidentiality policies and requirements;**

(vi) **to take action to prevent, deter and eliminate illegal, unreported and unregulated fishing;**

~~(vii) to elaborate multiannual management plans based on an ecosystem approach to fisheries to guarantee the maintenance of fish stocks above levels which can produce maximum sustainable yield, [and consistent with actions already taken at national level]; regulating the amount of total catch and fishing effort and their allocation among Members~~

~~(viii) to establish mechanisms for effective monitoring, control, surveillance and enforcement, including sanctions such as non-discriminatory market-related measures;~~

~~For the implementation of these recommendations~~

(c) promote the development and use of electronic means to facilitate communication and exchange of data and information among Contracting Parties;

(d) establish such mechanism as set out in the Rules of Procedure for the purpose of reviewing the advice of its subsidiary bodies to facilitate, as appropriate, the adoption of recommendations;

(e) promote programmes concerning ~~for marine and brackish water~~ aquaculture and coastal fisheries development and enhancement;

~~(f) regularly review the socio-economic aspects of the fishing industry and recommend any measures aimed at its development, including by obtaining and evaluating economic and other data and information relevant to the work of the Commission;~~

~~(g) to encourage, recommend, coordinate and, as appropriate, undertake training~~ **promote the development of institutional capacity and human resources, particularly through education, training and vocational extension activities in areas of competence of the Commission** ~~in all aspects of fisheries;~~

(h) enhance communication and consultation with civil society concerned with aquaculture and fishing;

~~(i) encourage, recommend, coordinate and; undertake research and development activities, including cooperative projects in the areas of fisheries and the protection of living marine resources;~~

~~to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources;~~

~~(j) adopt and amend, by a two-thirds majority of its membership, its Rules of Procedure and Financial Regulations and~~ **such other internal administrative regulations as may be necessary to carry out its functions;**

(k) approve the budget and programme of work of the Commission and

~~(l) exercise any other function as may be necessary for achieving the objective of this Agreement.]~~

[OPTION 2 (proposal by the EU):

- (a) to regularly assess and review the state of living marine resources;
- (b) to adopt multiannual management plans applicable and implemented in an equal, harmonized and unified way by all coastal States sharing the stocks subject to this plan and based on the ecosystem approach to fisheries to guarantee the maintenance of fish stocks above levels which can produce maximum sustainable yield;
- (c) to adopt, where appropriate, any other management measures to minimize impact of fishing activities on living marine resources to guarantee the maintenance of fish stocks above levels which can produce maximum sustainable yield. Such measures should as much as possible be included in the management plan or complement those already contained in it;
- (d) to adopt measures for ensuring, if possible through electronic means, the collection, submission, verification, storing and dissemination of data and information, consistent with relevant data confidentiality policies and requirements;
- (e) to adopt specific actions to prevent, deter and eliminate illegal, unreported and unregulated fishing, including mechanisms for effective monitoring and control.
- (f) to adopt, where applicable, an appropriate system of measure aiming at resolving situations of non-compliance, such as non-discriminatory market related measures;
- (g) to adopt the necessary actions to ensure a full implementation of the Commission decisions by its members, in particular developing nations.

The Commission shall also:

- (a) adopt and amend, by a two-thirds majority of its membership, its Rules of Procedure and Financial Regulations and such other internal administrative regulations as may be necessary to carry out its functions;
- (b) accept by a two-thirds majority any application for granting cooperating non-contracting Party status;
- (c) approve the budget and programme of work of the Commission; and
- (d) exercise any other function as may be necessary for achieving the objective of this Agreement.]

Article 9 (SUBSIDIARY BODIES OF THE COMMISSION)

[1.The Commission may establish temporary, special or standing ~~committees~~ **subsidiary bodies** to study and report on matters pertaining to the purposes of the Commission and working parties to study and recommend on specific technical problems. **The mandate of established subsidiary bodies shall be set out in the Rules of Procedure by taking in consideration the need for a sub-regional approach.**

2. ~~The committees~~ **subsidiary bodies** and working parties referred to in paragraph 1 above shall be convened by the ~~Chairman~~ **Chairperson** of the Commission at such times and places as are determined by the ~~Chairman~~ **Chairperson** in consultation with the Director-General of the Organization, as appropriate.]

N.B. The Working Group on the Amendment of the GFCM Legal Framework suggested that only a general reference is made to the establishment of subsidiary bodies whereas provisions concerning their functions and operations should be developed in the Rules of Procedure.

3. The establishment by the Commission of subsidiary bodies ~~committees~~ and working parties referred to in paragraph 1 above shall be subject to the availability of necessary funds ~~in the relevant chapter of the approved budget of the Commission and~~, before taking any decision involving expenditure ~~and the recruitment or appointment of specialists~~, the Commission shall have before it a report from the Executive Secretary on administrative and financial implications.

4. Each Contracting Party shall be entitled to appoint one representative to any subsidiary body and working parties who at sessions may be accompanied by alternates, experts and advisers.

5. Contracting Parties shall provide information relevant to the functioning of each subsidiary body and working parties in such a way as to enable them to fulfil their responsibilities.

Article 10 (THE SECRETARIAT)

[1. The Secretariat shall be composed of the Executive Secretary and such staff serving the Commission. The Executive Secretary and the staff of the Secretariat shall be appointed and governed in accordance with the terms, conditions and procedures laid down in the FAO Administrative Manual, FAO Staff Regulations and FAO Staff Rules as generally applicable to other staff members of the FAO.]

2. The Executive Secretary of the Commission 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 Contracting Parties.

3. The Executive Secretary shall be responsible for implementing the policies and activities of the Commission and shall report thereon to the Commission, according to the terms of reference set out in the Rules of Procedure. The Executive Secretary shall also act as Executive Secretary to other subsidiary bodies established by the Commission, as required.

~~The Commission shall transmit, after each session, to the Director-General of the Organization, a report embodying its views, recommendations and decisions, and make such other reports to the Director-General of the Organization as may seem to it necessary or desirable. Reports of the committees and working parties of the Commission provided for in Article VII of the Agreement shall be transmitted to the Director-General of the Organization through the Commission.~~

N.B. The Working Group on the Amendment of the GFCM Legal Framework suggested that provisions concerning the functions and operations of the Secretariat should be developed in the Rules of Procedure.

Article 11 (FINANCIAL ARRANGEMENTS)

[1. The Commission may adopt and amend, as required, its own Financial Regulations by a two-thirds majority of the Contracting Parties, which 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.]

N.B. Article 11.1 should be retained or deleted in light of decisions concerning the functions of the Commission under Article 8, which currently encompass the adoption and amendment of the Financial Regulations with a view to avoid duplications.

2. At each regular session, the Commission shall adopt its autonomous budget by consensus of its Contracting Parties, 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 Contracting Parties.

3. Each Contracting Party shall undertake to contribute annually its share of the autonomous budget based on the scale of contributions determined in accordance with a scheme which the Commission shall adopt or amend by consensus. The scheme shall be set out in the Financial Regulations.

4. Any non-member of the FAO that becomes a Contracting Party shall be required to make such contribution towards the expenses incurred by the 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 of the FAO.

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 of the FAO in conformity with the Financial Regulations of the FAO

8. A Contracting Party 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 Contracting Party to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Contracting Party but in no case shall it extend the right to vote beyond a further two calendar years.

N.B. The Working Group on the Amendment of the GFCM Legal Framework was informed that the delegation of the EU would consider to submit a proposal to amend Article 11 introducing the concept of contributions to the GFCM budget on a multiannual basis.

Article 12 (EXPENSES)

1. The expenses of delegates and their alternates, experts and advisers occasioned by attendance at sessions of the Commission and the expenses of representatives sent to subsidiary bodies of the Commission shall be determined and paid by the respective Contracting Parties.
2. The expenses of the Secretariat, including publications and communications and the expenses incurred by the Chairperson and Vice-Chairpersons of the Commission, when performing duties on behalf of the Commission between sessions of the Commission, shall be determined and paid from the budget of the Commission.
3. The expenses of research and development projects undertaken by individual Contracting Parties, whether independently or upon recommendation of the Commission, shall be determined and paid by the Contracting Parties concerned.
4. The expenses incurred in connection with cooperative research or development projects undertaken, unless otherwise available, shall be determined and paid by the Contracting Parties in the form and proportion to which they shall mutually agree. Contributions for cooperative projects shall be paid into a trust fund to be established by the FAO and shall be administered by the FAO in accordance with the Financial Regulations and Rules of the FAO. **[These projects shall be executed by the Secretariat].**
5. The expenses of experts invited to attend meetings of the Commission and its subsidiary bodies in their individual capacity shall be borne by the budget of the Commission.
6. The Commission may accept voluntary contributions generally or in connection with specific projects or activities of the Commission. Such contributions shall be paid into a trust fund to be established by the FAO. The acceptance of such voluntary contributions and the administration of the trust fund shall be in accordance with the Financial Regulations and Rules of the FAO.
7. 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 the FAO. The expenses to be borne by the FAO shall be determined and paid within the limits of the biennial budget prepared by the Director-General and approved by the Conference of the FAO in accordance with the Financial Regulations and Rules of the FAO.
8. Expenses incurred by delegates, their alternates, experts and advisers when attending, as government representatives, sessions of the Commission and its subsidiary bodies, as well as the expenses incurred by observers at sessions, shall be borne by the respective governments or organizations. **In recognition of the special requirements of developing States Contracting Parties, according to Article 17 and subject to the availability of funds, the expenses could be borne by the budget of the Commission.**

Article 13 (DECISION MAKING)

1. The recommendations referred to in ~~Article III, paragraph 1(b)~~ **Article 8(b)**, shall be adopted by a two-thirds majority of the Contracting Parties of the Commission present and voting. The text of such recommendations shall be communicated by the Chairman of the Commission to each Contracting Party, **cooperating non-Contracting Party and relevant non-member**.

2. Subject to the provisions of this Article, the Contracting Parties of the Commission undertake to give effect to any recommendations adopted under ~~Article III, paragraph 1(b)~~ **Article 8(b)**, from the date determined by the Commission, which shall not be before the period for objection provided for in this Article has elapsed.

3. Any Contracting Party of the Commission may within one hundred and twenty days/~~XXX days~~ from the date of notification of a recommendation object to it and in that event shall not be under obligation to give effect to that recommendation. **The objection should include a written explanation of reasons for objecting, and where appropriate, proposals for alternative measures**. In the event of an objection being made within the one hundred and twenty days period any other Contracting Party may similarly object at any time within a further period of sixty days. A Contracting Party may also at any time withdraw its objection and give effect to a recommendation.

4. If objections to a recommendation are made by more than one-third of the Contracting Parties of the Commission, the other Contracting Parties shall be relieved forthwith of any obligation to give effect to that recommendation; nevertheless any or all of them may agree among themselves to give effect to it.

5. ~~The Chairman of the Commission~~ **The Executive Secretary** shall promptly notify each Contracting Party immediately upon receipt of each objection or withdrawal of objection.

[6. In exceptional circumstances as determined by the Executive Secretary in consultation with the Chairperson, when urgent matters require Contracting Parties to take decisions between sessions of the Commission, any rapid means of communication may be used for decision-making with respect to procedural and administrative matters of the Commission, including any of its subsidiary bodies, other than matters relating to the interpretation of and the adoption of amendments the Agreement or its Rules of Procedure].

Article 14 (OBLIGATIONS OF CONTRACTING PARTIES)

[1. Subject to the provisions of this Article, the Contracting Parties of the Commission undertake to give effect to any recommendations made by the Commission **under Article 8(b)**, ~~Article III, paragraph 1(b)~~, ~~Article 7(b)~~, from the date determined by the Commission, which shall not be before the period for objection provided for in **Article 13** has elapsed.

2. **Each Contracting Party shall transpose, as appropriate, adopted recommendations into national laws. They shall report annually to the Commission, through the Compliance Committee, indicating how they have implemented the recommendations, including providing such relevant legislative and administrative documents as may be required by the Commission.**

3. Each Contracting Party shall take measures and cooperate to ensure that their duties as flag States and port States are fulfilled in accordance with relevant international instruments to which it is a party and recommendations adopted by the Commission.
4. The Commission, through a process leading to the identification of cases of non-compliance, will address Contracting Parties undermining adopted recommendations with a view to resolve situations of non-compliance.
5. Contracting Parties identified by the Commission as being non-compliant with adopted recommendations adopted shall be eligible for penalties under the scheme provided for in the Financial Regulations.]

N.B. The above article was drafted at the Working Group on the Amendment of the GFCM Legal Framework with a view to replace former Articles 14-17 which were generally considered to be too lengthy and complex. The text of Articles 14-17, as tabled at the Working Group on the Amendment of the GFCM Legal Framework, is reproduced in the comparative tables circulated together with this draft.

Article 15 (OBSERVERS)

- [1. In accordance with FAO Rules, the Commission may invite or allow in observer capacity, upon their request, regional or international governmental and non-governmental organizations which have interest and objectives common with those of the Commission or which activities are pertinent to the work of the Commission or its subsidiary bodies.]
- [2. Any member or associate member of FAO that is not a Contracting Party may, upon its request, be invited as an observer at sessions of the Commission and its subsidiary bodies. It may submit memoranda and participate without vote in discussions.]

Article 16 (COOPERATION WITH OTHER ORGANIZATIONS AND INSTITUTIONS)

1. The Commission shall cooperate ~~closely~~ with other international organizations and institutions in matters of mutual interest.
2. The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with other relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.

Article 17 (RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES CONTRACTING PARTIES)

[1. The Commission shall give full recognition to the special requirements of developing States Contracting Parties to this Agreement in relation to conservation and management of living marine resources and to the development of fishing activities.

2. In giving effect to the duty to cooperate to reach the objective of this Agreement, the Commission shall take into account the special requirements of developing States Contracting Parties, in particular:

- (a) **the vulnerability of such developing States Contracting Parties which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or part thereof;**
- (b) **the need to avoid adverse impacts on and ensure access to fisheries by subsistence, small-scale fishers and fish workers;**
- (c) **the need to ensure that such recommendations adopted do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing States Contracting Parties; and**
- (d) **financial and social pressures that developing States Contracting Parties could be incapable of facing within the limits of their resources.**

3. The Contracting Parties shall cooperate either directly or through the Commission for the purposes set out in this Article, which may include to provide assistance directed towards:

- (a) **improved conservation and management of living marine resources through collection, submission, verification, storing and dissemination of data;**
- (b) **stock assessment and scientific research;**
- (c) **development of fishing activities;**
- (d) **promotion of a human-right based approach to small-scale fisheries;**
- (e) **alleviation of any socio-economic impact on fishers organizations;**
- (f) **monitoring, control, surveillance, including training and capacity-building at the local level and access to technology and equipment; and**
- (g) **ensuring the participation to sessions of the Commissions or its subsidiary bodies by delegates, their alternates, experts and advisers when attending, including through the participation fund set out in the Financial Regulations.]**

Article 18 (NON MEMBERS)

1 The Commission, through the Secretariat, shall exchange information with respect to vessels engaged in fishing or fishing related activities in the Agreement Area that are

flying the flags of non-members to this Agreement and, as appropriate, identify cases of non-compliance by non-members.

2. The Commission shall take measures consistent with this Agreement and international law, to deter the activities of such vessels which undermine the effectiveness of applicable recommendations, and shall regularly report on any action taken in response to fishing or fishing related activities in the Agreement Area by non-members.

3. The Commission shall draw the attention of any non-member to this Agreement to any activity which in the opinion of the Contracting Party or Contracting Parties negatively affects the implementation of the objective of this Agreement.

4. The Commission shall request non-members to this Agreement whose vessels are engaged in fishing or fishing related activities in the Agreement Area to become parties to this Agreement or to cooperate fully in the implementation of recommendations adopted by the Commission. Such cooperating non-members may enjoy benefits commensurate with their commitments to comply with recommendations adopted according to the criteria for attaining the status of cooperating non-member set out in the Rules of Procedure.

Article 19 (SETTLEMENT OF DISPUTES ON THE INTERPRETATION AND APPLICATION OF THE AGREEMENT)

[1. Contracting Parties shall faithfully cooperate in order to prevent disputes including, as a first resort, through bilateral consultations. Where this is not possible, and should the dispute not be settled bilaterally, it shall be

[OPTION 1: referred to an ad hoc expert panel established in accordance with the Rules of Procedure. The recommendations by such panel, while not binding in character, shall constitute the basis for renewed consideration by the Contracting Parties concerned of the matter out of which disagreement arose.]

[OPTION 2: referred to to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee. The recommendations of such a committee, 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 shall be referred to the International Court of Justice in accordance with the Statute of the Court, or, in the case of a Regional Economic Integration Organization that is a Member of the Commission, it shall be submitted to arbitration unless the parties to the dispute agree to another method of settlement.]~~

[OPTION 3: submitted to arbitration, unless the parties to the dispute agree to another method of settlement.]

N.B. Three options were elaborated by the Working Group on the Amendment of the GFCM Legal Framework and they are reproduced above.

Article 20 (RELATIONSHIP WITH OTHER AGREEMENTS)

- 1. Where there is any change to the provisions of the Basic Texts of the Organization that affects the provisions of this Agreement, its Rules of Procedure or Financial Regulations, including by adoption of new provisions or amendment of existing ones, the adoption and implementation of such change by the Organization or any of its parts shall take precedence over the provisions in the Agreement its Rules of Procedure or Financial Regulations, in case of ambiguity.**
- References in this Agreement to the 1982 Convention or to other international agreements, do not prejudice the position of any State with respect to signature, ratification, or accession to the 1982 Convention or with respect to other agreements, **nor the rights, jurisdiction and duties of Contracting Parties under the 1982 Convention or the 1995 Agreement.**

Article 21 (OFFICIAL LANGUAGES OF THE COMMISSION)

- 1. The official languages of the Commission shall be such official languages of the FAO as the Commission itself may decide, as specified in the Rules of Procedure. The delegations may use any one of these languages at sessions and for their reports and communications.**
- 2. During the Commission sessions, interpretation in one or more of the official languages of the Commission shall be provided.**
- 3. Publications of reports and communications shall be in the language in which they are submitted and, when required by the Commission, abstracts will be provided in any other official language of the Commission.**

Article 22 (AMENDMENTS)

- The Commission may amend this Agreement by a two-thirds majority of all the Contracting Parties. Subject to paragraph 2 below, amendments shall come into force as from the date of their adoption by the Commission.
- Amendments involving new obligations for Contracting Parties shall come into force after acceptance by two-thirds of the Contracting Parties and with respect to each Contracting Party only on acceptance of it by that Contracting Party. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the FAO who shall inform all the Members of the FAO, as well as the Secretary-General of the United Nations, of the receipt of acceptance and the entry into force of such amendments. The rights and obligations of any Contracting Party that has not accepted an amendment involving

additional obligations shall continue to be governed by the provisions of this Agreement as they stood prior to the amendment.

3. Amendments to this Agreement shall be reported to the Council of the FAO which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives and purposes of the FAO or the provisions of the Constitution of the FAO. If the Council of the FAO considers it desirable, it may refer the amendment to the Conference of the FAO which shall have the same power.

Article 23 (ACCEPTANCE)

1. This Agreement shall be open to acceptance by Members or associate Members of the FAO.

2. The Commission may, by a two-thirds majority of its membership, admit to membership such other States that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency as 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 admission.

3. Participation in the activities of the Commission by Contracting Parties which are not Members or associate Members of the FAO shall be contingent upon the assumption of such proportionate share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations and Rules of the FAO.

4. Acceptance of this Agreement by any Member or associate Member of the FAO shall be effected by the deposit of an instrument of acceptance with the Director-General of the FAO and shall take effect on receipt of such instrument by the Director-General.

5. Acceptance of this Agreement by non-members of the FAO shall be effected by the deposit of an instrument of acceptance with the Director-General of the FAO membership shall become effective on the date on which the Commission approves the application for membership, in conformity with the provisions of paragraph 2 of this Article.

6. The Director-General of the FAO shall inform all Contracting Parties of the Commission, all Members of the FAO and the Secretary-General of the United Nations of all acceptances that have become effective.

[7. Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous approval by the Contracting Parties. Contracting Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such approval, the nation or regional economic integration organization making the reservation shall not become a party to this Agreement. The Director-General of the FAO shall notify forthwith all Contracting Parties of any reservations.]

N.B. The Working Group on the Amendment of the GFCM Legal Framework was informed that the delegation of Turkey would consider either retaining only one between Article 23.7 or Article 25.

Article 24 (ENTRY INTO FORCE)

1. This Agreement shall enter into force as from the date of receipt of the fifth instrument of acceptance.

Article 25 (RESERVATIONS)

[1. 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.]

~~The Members of the Commission shall, when accepting this Agreement, state explicitly to which territories their participation shall extend. In the absence of such a declaration, participation shall be deemed to apply to all the territories for the international relations of which the Member is responsible. Subject to the provisions of Article XVI below, the scope of the territorial application may be modified by a subsequent declaration.~~

N.B. The Working Group on the Amendment of the GFCM Legal Framework was informed that the delegation of Turkey would consider either retaining only one between Article 25 or Article 23.7.

Article 26 (WITHDRAWAL)

1. Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Contracting Party, by giving written notice of such withdrawal to the Director-General of the FAO who shall immediately inform all the Contracting Parties and the Members of the FAO of such withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Director-General of the FAO.

2. A Contracting Party 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 Contracting Party 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 declaration, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Contracting Party is responsible, with the exception of associate members.

3. Any Contracting Party that gives notice of withdrawal from the 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 Contracting Party concerned is responsible, except that such withdrawal shall not be deemed to apply to an associate member.

Article 27 (TERMINATION)

1. This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below five, unless the remaining Contracting Parties unanimously decide otherwise.

Article 28 (CERTIFICATION AND REGISTRATION)

The text of this Agreement was originally formulated at Rome on the 24th day of September one thousand nine hundred and forty-nine in the French language and [was amended on (xx)...] Two copies in the Arabic, English, French and Spanish languages of this Agreement and of any amendments to this Agreement shall be certified by the Chairperson of the Commission and by the Director-General of the FAO. One of these copies shall be deposited in the archives of the FAO. The other copy shall be transmitted to the Secretary-General of the United Nations for registration. In addition, the Director-General shall certify copies of this Agreement and transmit one copy to each member of the FAO and to such non-member nations of the FAO that are or may become Contracting Parties to this Agreement.