



CARIBBEAN REGIONAL FISHERIES MECHANISM SECRETARIAT

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A COMMON FISHERIES REGIME FOR THE CARIBBEAN SEA

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EXECUTIVE SUMMARY

The CARICOM Heads at the Fourteenth Inter-Sessional Meeting in February 2003 endorsed proposals on the imperative of elaborating a Common Fisheries Regime (CFR). In March, the Caribbean Regional Fisheries Mechanism (CRFM) was officially launched and at the inaugural meeting of its Forum that determines its work, it was decided that it would take responsibility for this Regime. In June 2003, a Working Group met and agreed to a Plan of Action (POA). This POA was subsequently presented to the CARICOM Heads at their Fifteenth Inter-Sessional Meeting in March 2004, who approved the continuance of work in this area. The Heads also charged the CARICOM Secretariat with producing proposals on the CFR and on maritime delimitation for submission at their next CARICOM Heads Meeting in July 2004. This Report addresses these two main concerns of the Heads and covers the main findings and recommendations with respect to them.

1 Main Findings

1.1 The CARICOM Common Fisheries Regime

The main elements of a common fisheries regime should include the following: 1) the acceptance of a common fisheries policy and strategy; 2) demarcation of its fisheries Zone; and 3) an appropriate regional organisation for administering, implementing and enforcing the policy.

CARICOM's common fisheries policy has to be based on the international marine and fisheries conventions since UNCLOS, including the strategy outlined in the Barbados Program of Action for SIDS. They are supportive of CARICOM's policy objective of sustainable fisheries development of the Caribbean Sea. The two most important aspects of a common policy pertain to: 1) agreement on access to the resources of the CARICOM Fisheries Zone by Member States; and 2) resource access of Third Parties (distant water fishing states) that have a historic presence in the region. The access to resources within the CARICOM Fisheries Zone is governed by a UNCLOS proviso that stocks surplus to the coastal state capacity should be shared with other states. In a CARICOM regional context, the policy for access is that Member States have preferred access, not open access, over Third States, to any surplus stocks in the region. However, the resource situation indicates that there are few surplus stocks in the region.

The CARICOM Fisheries Zone that can be established on the basis of declared EEZs of Member States will not be a contiguous zone. It will consist of two relatively large sub-regions, which cover the Bahamas to Jamaica in the north and Suriname to St. Lucia in the south, that are interspersed with three small sub-areas: Dominica; the Leeward Islands of Montserrat, St. Kitts-Nevis, and Antigua and Barbuda; and Belize. This non-contiguous nature of the zone indicates that extensive cooperation will be required with non-CARICOM states, particularly those sharing shelf or marine resources. Fortunately, CARICOM has made provision for cooperation and participation of the non-member States in the CRFM, the

majority of which are co-members with CARICOM states in the Association of Caribbean States (ACS).

The goals of CARICOM's policy of sustainable fisheries development are: 1) to protect the resource capability to sustain itself biologically, and 2) to provide good socio-economic returns to those engaged in harvesting the resource. These goals are unattainable without effective management. From a regional fisheries point of view, the requirements for sustainable fisheries management are: a) to establish a policy and strategy for regional management that conforms to international agreements on fisheries exploitation; b) to put in place an effective administrative and regulatory structure or organisation, including provisions for research, conservation and surveillance; and c) to implement management measures. It is in the context of the responsibilities and measures of a regional fisheries management organisation (RFMO) that the performance of the CRFM was examined.

It was found that the CRFM has functioned mainly as an advisory and not as a management organisation. In its first year, the CRFM concentrated on: coordinating fisheries in Member States; conducting research and resource assessments involving regional and national stocks; assisting with the development of fishing plans; developing strategic and work plans; securing, executing and managing externally financed programs and projects; networking with regional and international organisations; and representing CARICOM or its Member States at international fisheries fora. Although these constitute important services to regional needs, the CRFM has not been involved with the management of the exploitation of regional stocks, an indispensable requirement for sustainable fisheries development, but it plans to do so by creating regional fisheries organisations (RFMOs) for specific stocks. This could result in a proliferation of organisations providing essentially the same services. An examination was therefore made as to whether the CRFM could provide the RFMO for the CARICOM Region. It was found that, with some institutional strengthening, it could. It is also contended that an effective RFMO could lessen considerably delimitation problems in the Caribbean Sea since fisheries problems are usually a bone of contention in delimitation.

1.2 Maritime Delimitation

Maritime boundary delimitation is proceeding slowly in CARICOM, with less than one quarter of the potential boundaries settled, and delimitation problems are appearing in the Region. The potential maritime boundaries claims yet to be settled can be conveniently grouped in five categories, namely, CARICOM Member States and metropolitan powers; CARICOM Member States and other Caribbean States; intra-CARICOM (other than OECS Members); inter-CARICOM Member States (other than OECS Members) and OECS Members; CARICOM (other than OECS Members) and OECS Members, and intra-OECS Members. It is of interest to note that the majority of maritime boundaries delimited thus far by CARICOM countries fall within the first and second categories and that no delimitation agreement has been concluded between an OECS and a non-OECS CARICOM Member State or between two OECS Member States.

The Report points out that urgent practical steps need to be taken to ensure that maritime boundaries be settled amicably without acrimony and in a cost-effective manner. Although maritime boundary delimitation is in essence a bilateral matter, CARICOM Member States can agree on a common approach to delimitation among themselves and can formulate a common position with respect to delimitation with Third states, e.g., the OECS and Venezuela. An appropriate strategy, which takes into account exploitation of the natural resources, living and non-living (oil and gas) and which involves the CARICOM and OECS Secretariats, should be devised to assist Member States to undertake boundary negotiations. The strategy should be guided by considerations that would benefit the CARICOM region as a whole

2 Recommendations

At the Fifteenth Inter-Sessional Meeting, the CARICOM Heads agreed that “in order to effectively protect the Caribbean Sea and promote the sustainable use of its fisheries resources, Member States will ensure the successful functioning of the recently established Caribbean Regional Mechanism and will in due course consider investing it with the authority to administer a comprehensive Common Fisheries Regime.” The main findings of this study with respect to these issues are: 1) A common Fisheries regime constitutes a realistic objective for CARICOM that can lead to its extension over the entire Caribbean Sea; and 2) The CRFM has the mandate to become the RFMO for the Region. It is within the spirit of the Heads agreement and these findings that the following policy recommendations are made:

2.1 The Common Fisheries Regime

CARICOM should articulate a Common Fisheries Policy in consultation with its Member States and stakeholders and develop an implementation plan covering a two-year time frame.

CARICOM should indicate its strategy for fisheries development in its CFZ, including its management plan for the Zone, conditions of access to the fisheries resources for Member or Participating States and for Third Party States (distant water fishing States).

CARICOM should establish a Common Fisheries Zone (CFZ) based on the declared EEZ limits of its Member States and should endeavour to make this a contiguous zone by agreements with non-CARICOM States as Participating Members of this Zone.

CARICOM should utilise the newly established CRFM as the regional fisheries management organisation for the CFZ and should institutionally strengthen it to be an effective management body. The CRFM should review its current priorities as stated in its Strategic Plan with the objective of reducing its priorities and bringing them more in line with a focus on management.

CARICOM should ensure that its Members would cooperate in providing the necessary services for surveillance and enforcement, inspection and other services that the CRFM

would require for effective management, including appropriate legislation for these services.

CARICOM should be regionally represented at ICCAT with the CRFM as the representative organisation and that Member States should be responsible for the cost of regional membership.

CARICOM should establish a program for the implementation of the Common Fisheries Regime, based on the above recommendations and a two-year time frame. This would involve: consultations with Member States and subsequently with strategic non-Member States; the convening of a legal workshop for the development of appropriate protocols and for recommending any changes or amendments that might be required in the Agreement Establishing the Caribbean Regional Fisheries Mechanism; and securing the international (UN) approval of the CRFM as the RFMO for the Region.

2.2 Delimitation

CARICOM Member States should pay greater attention to defining the limits of their national jurisdiction. Collectively, the Common Fisheries Regime may require them to define the extent of their maritime jurisdiction.

The CARICOM and the OECS Secretariats respectively should develop guidelines that would enable them to assist their Member States to prepare for boundary negotiations without appearing to be favouring any particular Member. They should have the ability to assist Member States when they are negotiating with Third States.

The CARICOM Secretariat should consider establishing a small technical unit to assist Member States with preparation for maritime boundary negotiation. The unit's tasks would include human resource development with respect to maritime boundary negotiating teams of Member States (including OECS), focusing on preparatory assistance with respect to maritime areas legislation, where needed, hydrographic and technical report, negotiating brief and the development of negotiating teams.

There should be greater transparency within CARICOM with respect to maritime boundary preparation for and negotiation of agreements between Member States or between a Member State and third States.

Where it is feasible, an accompanying fisheries access arrangement (in the absence of a Common Fisheries Regime being in place) should be agreed to at the time of conclusion of a boundary agreement between two or more Member States.

Within the context of the UNCLOS, particularly with respect to the semi-enclosed status of the Caribbean Sea, CARICOM States should formulate a common strategy that includes

matters relating to maritime boundary delimitation, to the extent that they are consistent with international law and practice.

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ACRONYMS

ACS	Association of Caribbean States
ALC	Automatic Location Communicator
CARICOM	Caribbean Community
CFRAMP	Caribbean Fisheries Resource Assessment and Management Program
CFR	Common Fisheries Regime
CFU	CARICOM Fisheries Unit
CFZ	CARICOM Fisheries Zone
CIDA	Canadian International Development Agency
COMSEC	Commonwealth Secretariat
CPUE	Catch Per Unit of Effort
CRFM	Caribbean Regional Fisheries Mechanism
CROSQ	CARICOM Regional Organisation for Standards and Quality
CSME	CARICOM Single Market and Economy
EEZ	Exclusive Economic Zone
FAO	Food and Agricultural Organisation
FFA	South Pacific Forum Fisheries Agency
ICCAT	International Commission for the Conservation of Atlantic Tunas
MSY	Maximum Sustainable Yield
OECS	Organisation of Eastern Caribbean States
RFMO	Regional Fisheries Management Organisation
SIDS	Small Island Developing States
TAC	Total Allowable Catch
UNCLOS	United Nations Law of the Sea Convention
WECAFC	West Central Atlantic Fishery Commission, FAO

1 Introduction

There is ongoing appreciation for and support of the concept of the Caribbean Sea as a special area for Sustainable Development. Inherent in this concept is the need for the development of a common fisheries regime, at least among CARICOM states that would allow for the rational exploitation, adequate management, and conservation of fisheries resources.

At the Eighth Meeting of the Conference of Heads of Government in 1987, it was agreed that a multi-disciplinary committee would prepare a draft Inter-Governmental Agreement for Coordinating and Harmonising the Management of Fisheries Resources. The draft was considered at the Fifteenth Meeting of the Standing Committee of Ministers of Agriculture. For a number of stated reasons, the decision was taken not to pursue the matter at the time. CARICOM Heads of Government returned to this issue at their Fourteenth Inter-Sessional Meeting in February 2003. The Conference endorsed proposals from the Government of Barbados on **‘the imperative of elaborating a Common Fisheries Regime’** and mandated the Secretariat to undertake the necessary framework and propose a framework for consideration at the Twenty-Fourth Meeting in July 2003. The Fifteenth Inter-Sessional Meeting of the Conference of Heads of the Caribbean Community, Basseterre, St. Kitts and Nevis, 25-26 March 2004 endorsed the continued elaboration of a Common Regional Fisheries Regime.

Although a Caribbean Regional Fisheries Mechanism (CRFM) has been established by CARICOM, there is yet no legally binding internal regime to support sustainable management and optimal exploitation of the Region’s fish stocks. The absence of such a harmonised structure has from time to time caused controversy and tensions between Member Governments in the exercise of rights over their respective Exclusive Economic Zones (EEZs), including the recent well-publicised impasse between Barbados and Trinidad and Tobago.

The objective of this report is to provide a harmonised fisheries policy for the Caribbean Community in support of the sustainability of the fisheries industry through the development of a comprehensive framework for the sustainable exploitation and conservation of fisheries resources in the Region. This document will spell out a common approach to the development and understanding of regional and international matters relating to fisheries, including its management/governance, exploitation and surveillance. This framework provides the following:

1. Stipulated guidelines for exploitation and conservation of fisheries resources in the Region -
 - (i) rules on the operation in the fishery zone;
 - (ii) development of a licensing system;
 - (iii) creation of a quota system that would guarantee sustainable harvesting;
 - (iv) development of a system to determine the yearly allowable catch;

- (v) development of a system for the documentation of catches and landings;
 - (vi) development of a system for ensuring compliance;
2. Outline of a system of technical standards and best practices in fisheries management in keeping with international standards for the export of fishery products;
 3. Development of a clear and transparent policy for the granting of fishing access to third countries;
 4. Development of security procedures and reporting systems for use by Coast Guard, Customs and Immigration and other relevant bodies; and
 5. Identification of a common maritime authority to manage resources, cooperate in research and provide technical support for ongoing fisheries projects in the Region.

The consultants commenced their assignment by participating in a series of meetings with officials of the CRFM and the CRFM Forum in St. Vincent and the Grenadines in April. Essentially, the goal of these meetings was to obtain information on the performance of the CRFM in its first year of operations and to determine what progress had been made with the Common Fisheries Regime (CFR). It was found that, with respect to the CFR, the CRFM has taken the first steps by establishing a Working Group. In a Meeting in Trinidad and Tobago in June 2003, this Working Group had identified the following key issues to be addressed:

- (i) Organisational matters, such as membership in and scope and coverage of the CFR;
- (ii) Legal issues, such as the delimitation of national marine boundaries, and multilateral and bilateral Agreements such as UNCLOS;
- (iii) Socio-economic issues, such as contribution to national output and employment;
- (iv) Linkage issues, including the multi-functional role of the fisheries industry and the roles of the various institutions involved.

The first two of these issues are consistent with the TOR and are the main concerns of this report. However at the Forum meeting, it was agreed that Member States could suggest changes to the original TOR for consideration by the consultants within 7 days of the meeting. Trinidad and Tobago submitted amendments that essentially requested covering issues iii and iv. Because of the time constraints and the research necessary, the consultants were unable to provide more than a very cursory treatment of these last two, the socio-economic and linkage issues.

The consultants would like to acknowledge their great indebtedness to the General Counsel of the CARICOM Secretariat and officials from the CRFM and its Member States for the

constructive and helpful comments and suggestions made to a “Working Draft” that was examined at a meeting of the Forum at the CARICOM Secretariat in Guyana on the 9-10 of June. Written comments, made subsequently by Trinidad and Tobago, St. Lucia, Barbados and Dominica, were taken into consideration by the consultants in finalising this report. The views expressed are those of the consultants and do not necessarily reflect the official policy of CARICOM. The consultants take full responsibility for any errors and omissions in the report.

2 Fisheries and Delimitation Issues, Caribbean Sea

2.1 The Ocean Environment, CARICOM Region¹

The ocean environment pertinent to CARICOM includes the Caribbean Sea and the central Atlantic region off the coasts of Latin America from Suriname to Trinidad and Tobago. The Caribbean Sea encompasses a semi-enclosed area of 2.6million km², while the area from Suriname to Trinidad and Tobago, based on length of coastlines and 200-nautical-mile limits (EEZs), covers roughly 310,000 km². This whole area is encompassed within FAO fishing area no. 31, which has an area of 14.5 million km². CARICOM states, because of their exclusive economic zones (EEZs), have sovereign and jurisdictional rights over most of his area, which is endowed with fisheries resources and which possesses favourable strata for oil and gas and mineral resources. CARICOM and non-CARICOM states share these resources, particularly the highly migratory fish stocks.

From a fisheries standpoint, the biological productivity of the Caribbean Sea is relatively low. The cause can be traced to three main influences: topological features, characterised by relatively small shelf areas, particularly around the islands, and by ocean deeps and troughs; distance, in that the small island areas are far enough away to receive only minimal effects of the river discharges from South America; and climatic factors, in that warm tropical waters are generally not as productive as are waters in temperate and higher latitudes. The biological productivity of the marine area from Suriname to Trinidad and Tobago is higher than in the Caribbean Sea because of a relatively large continental shelf (about 40 per cent of the EEZ area) and because most of the currents in this area, with the exception of the north equatorial and Guyana currents, flow clockwise. Thus, the area has high nutrient retention, which leads to an abundance of demersal and pelagic resources.

The magnitude and extent of stocks for the Caribbean Sea are not well known. The last extensive survey was made by FAO in the 1960's, and in 1970 (Gulland) estimates of Maximum Sustainable Yields (MSY) for the demersal (bottom-feeding fish), pelagics (surface feeders which move long distances), and shell fish resources ranged between 400 thousand tonnes to 800 thousand tonnes. For the marine area from Trinidad to Suriname, estimates of stocks for demersal resources indicated a stock of 728 thousand tonnes, with a

¹ This section is based on the study by C. L. Mitchell and H. Charles (1997), *A Strategy for Co-operation in Sustainable Oceans Management and Development, Commonwealth Caribbean*, CIDA and the Commonwealth Science Council of COMSEC.

sustainable yield of 182 thousand tonnes a year. Although data on the pelagic resources are scarce, it is estimated that stocks in the area are probably as large as are the demersal fish resources (UNDP/FAO, 1976). This indicates that total sustainable yields from fish stocks in the Suriname, Guyana and Trinidad and Tobago areas are about 260 thousand tonnes, about 94% of which are in the Guyana- Suriname area.

In the 1990s, the Canadian Caribbean Fisheries Resource and Management Programme (CFRAMP) commenced work in CARICOM for the purpose of improving the region's capability for fisheries stock assessment. This programme, which led to the establishment of the CRFM, has resulted in the ongoing scientific assessment of stocks in the CARICOM region. The assessments have revealed high levels of exploitation resulting in a number of threatened species in the region. Specific resources that are overexploited, or exploited close to their MSYs, include shrimp, spiny lobsters, conch, turtles, reef species and some of the small pelagic species, such as flying fish. The highly migratory tuna and billfish resources of the region are exploited by Caribbean vessels from Venezuela to Cuba and the Bahamas and by distant water fishing fleets. These resources are assessed by the International Commission for the Conservation of Atlantic Tunas (ICCAT), the management authority, and this assessment indicates that they are highly or fully exploited and some billfish stocks are over-exploited requiring rebuilding programs. The Western Central Atlantic Fisheries Commission (WCAFC) of FAO [The status of Resources and Fisheries of the WECAF Area (1997)] also reveals the precarious nature of the major fish stocks in the entire area i.e., FAO Fishing Area no 31. Thus, the fisheries resource situation in the Caribbean Sea indicates that the sustainability of fisheries in this area is in jeopardy and that management is critical.

2.2 Regional Fisheries Issues

The structure of the fishing industry in the CARICOM region is characterised by: 1) a large artisanal fisheries sector in CARICOM states where the majority of fishermen fish on a day-by-day basis utilising small boats and limited technology; 2) an industrial fleet sector of large, modern, capital-intensive vessels which operate mainly for shrimp off the coast of South America, and in the wider Caribbean for tuna as well as an intermediate sized fleet in Eastern Caribbean for flying fish; and 3) a processing, distribution and marketing sector. Processing is limited primarily to the industrial sector and turns out products mainly for export rather than for domestic consumption (tuna and shrimp).

This report will concentrate on the regional issues of CARICOM fisheries in the Caribbean Sea and will deal primarily with the industrial fleet sector. This sector is the most dynamic and progressive in terms of growth of output and technology employed. During the 1990s, landings from the industrial fleet increased at a rate of growth of over 10% a year and contributed about 30% to the volume of fish landed in the CARICOM region (Rainford and Mitchell, p. 13). The mobile nature of the industrial fleet, together with its technology, makes this sector the most threatening to sustainable fisheries development. Although the artisanal fisheries sector is the more important sector in terms of employment it will be dealt with peripherally to the industrial sector because its area of operations is mainly

within territorial limits of CARICOM States and its management approaches are different and more complicated [Berkes, Mahon, et al, (2001)].

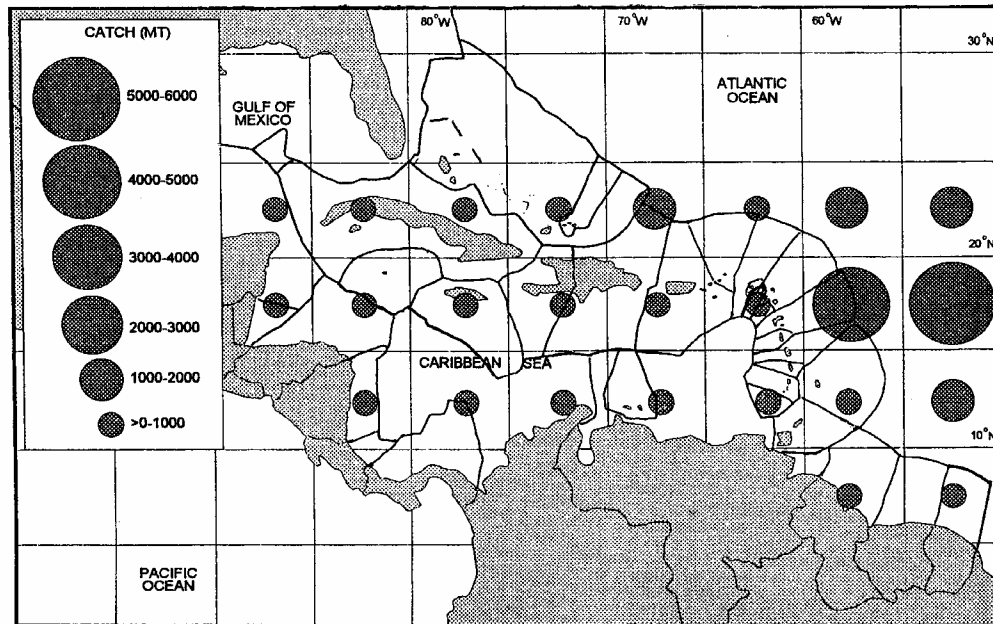
Regional issues are the result of: a) the highly migratory nature of resources; b) straddling stocks due to delimitation; c) ecological and environmental factors; and d) marketing problems. With respect to the environment, the Caribbean sea has been subjected to many forms of pollution from land-based sources (pesticides and solid waste), red tides and toxic plumes, tanker discharges, and reef and habitat degradation that has adversely affected fisheries resources and fishing operations (Hinrichsen, 1998).

From the standpoint of the migratory species, there are two problem areas: 1) the regional tuna fisheries; and 2) the flyingfish fisheries in the Eastern Caribbean. Tuna and billfish stocks move through the Caribbean and are exploited by fleets from many Caribbean coastal states and from distant water countries, mainly Korea, Japan and Taiwan (The Republic of China). The distant water tuna fleets fish in the mid-Atlantic but about 20% of their catch takes place within the EEZs of CARICOM Member States (Fig. 1). Tuna and other billfishes are under ICCAT management, but since not all the Caribbean coastal states are members, catches are under-reported to ICCAT. The flying fish fisheries involve a much smaller migratory pattern, but the resources are exploited in the EEZs of CARICOM and non-CARICOM countries ranging from Trinidad and Tobago to the Leeward Islands. In view of the short distances between the islands and the known use by some countries of vessels capable of staying at sea for time periods up to two weeks, it is easy for these vessels to traverse many EEZs, leading to instances of illegal fishing. Disputes in this regional fishery between Barbados and Trinidad and Tobago have been referred to binding dispute resolution procedures under UNCLOS.

From a marketing standpoint, the region exports shrimp (Guyana and Suriname), spiny lobsters, conch (Belize, Jamaica, Bahamas, Eastern Caribbean), tuna and other fish species (the region) mainly to the North American market. Exports of fish products from the CARICOM region were over US \$250 million in 2000 and imports were about \$80 million indicating a favourable balance-of-trade in these products (FAO, Annual Yearbook Fisheries Statistics: Commodities, 2000). There are no regional quality control standards for these products, and meeting quality standards in major markets has sometimes been problematic for Caribbean countries. However, some countries have or are putting in place fish quality control legislation. CARICOM is in the process of remedying this deficiency by the establishment of the CARICOM Regional Organisation for Standards and Quality (CROSQ).

The fishing industry in CARICOM makes an important contribution to development. It is a means of employment, it is a source of animal protein for the population, and it generates import-substitution effects. There has been increased attention on fisheries development in the region. This has been characterised by infrastructural developments in the industry due to Japanese assistance programs in the SIDS of CARICOM and to the development and expansion in their industrial fleet. In recent years, CARICOM economies have been adversely affected by globalisation and trade liberalisation. Consequently, their rates of

Figure 1²
Total Catch by Tuna Longliners, 1985-1990
Within and Outside EEZ Boundaries in the Caribbean



Source: CARICOM (1996), *Catch, Effort, and CPUE Trends for Offshore Pelagics Fisheries in and Adjacent to the Exclusive Economic Zones (EEZs) of Several CARICOM States*, CARICOM Fishery Report No. 1, CARICOM Fisheries Unit, Belize City, Belize.

growth in the 1980's and 1990's declined. Global forces have brought about greater regional economic integration through the pursuit of a CARICOM Single Market and Economy (CSME) and trade agreements with the Dominican Republic and Cuba. However, the main issue is that of improving the international competitiveness of the CARICOM region. Fisheries is one of the few sectors in the region that has distinct comparative advantages in that it can be internationally competitive because of the types of resources available and the proximity to North America. As a result, the management and development of this sector is critical to the future development of the region and, as pointed out earlier, the regional and industrial fisheries constitute the most dynamic segment of the fishing industry in the region.

² This chart does not accurately reflect the extent of Dominica's EEZ and is used solely for the purposes of showing provisional maritime jurisdiction based on strict equidistance, and is without prejudice to negotiated or potential boundary lines.

2.3 Delimitation Issues³

Maritime boundary delimitation is the principal means by which the limits of the national jurisdiction of a coastal State are defined. The time-honoured practice of States, particularly large maritime powers, is to define the extent and the limits of maritime jurisdiction as soon as international law, through an international convention or otherwise, recognises coastal States' right to extend their national maritime jurisdiction. Thus, the European Economic Community (EEC, as it then was) Member States, Canada, the United States as well as certain other States respectively, began negotiating maritime boundary agreements soon after they extended their fisheries jurisdiction to 200 nautical miles, in some instances even before the exclusive economic zone (EEZ) was declared. In order to properly manage fisheries or EEZ areas, coastal States need to be sure of the extent of their national jurisdiction. In legal terms, extent of an EEZ or a fisheries zone is not known, unless it is defined by delimitation, and so legal arrests of vessels in outer waters in a claimed EEZ is difficult to sustain.

All but two of the CARICOM Member States are coastal States of the Caribbean Sea, a semi-enclosed sea, which attracts a particular regime of co-operation under the UNCLOS (Part IX, Articles 122-123). An important feature of the Caribbean Sea, so far as boundary delimitation is concerned, is the presence of numerous islands, islets, rocks and sandbanks in many parts of the area. Another is the large number of CARICOM Member States, (six, Antigua and Barbuda, Bahamas, Grenada, Jamaica, St. Vincent and the Grenadines, and Trinidad and Tobago), that meet the requirements of an archipelagic state. Further, in terms of maritime boundary delimitation considerations, an added complication is the existence of a large number of sovereign independent States (22) and several dependent territories (18) located throughout the Caribbean Sea. There are at present 26 delimitation agreements concluded by coastal States of the Caribbean Sea (although a few of the agreements are double-fronted, namely Trinidad and Tobago and Venezuela (Caribbean and Atlantic), Dominica-France (Guadeloupe and Martinique)-(Caribbean and Atlantic), Colombia-Panama (Caribbean and Pacific), and Costa Rico-Panama (Caribbean and Pacific).

At the present time, the independent Member States of CARICOM have entered into seven maritime boundaries delimitation treaties, while Barbados and Guyana have concluded a provisional agreement under Article 74(3) of UNCLOS in the form of a Cooperation Treaty in respect of the overlapping areas of their EEZs and outside the EEZ of Third States. The dependent Member State of Montserrat has, through the Government of the United Kingdom, concluded a maritime boundary treaty with France (Guadeloupe) in 1996 and entered into force in 1997. (In 1893 UK signed a treaty with Mexico delimiting, *inter alia*, the internal waters between British Honduras (Belize) and Mexico.) The Associate Members of CARICOM have had five treaties concluded on their behalf by the United Kingdom.

³ See Reports 1-27 on Maritime Boundary Delimitation and related Treaties of the Caribbean Sea region concluded between 1942-2003, in the International Maritime Boundary Series, Region 2, published by the American Association of International Law.

2.3.1 Factors Affecting Delimitation in CARICOM

The geopolitical nature of the Caribbean region causes difficulties for coastal States who wish to utilise their natural resources, particularly the living resources, because the EEZs of most of the States and territories of the Caribbean Sea have very narrow maritime zones. An example of this is Dominica's EEZ, which is no more than 32 nautical miles at its widest point throughout its 200 miles length. It follows that fish stocks move freely across these waters, making it likely that fishermen will be inclined to follow the fish across borders. The recent history of the region has recorded many problems for fishermen of several countries experiencing difficulties through allegedly entering neighbouring States' jurisdiction without authorisation. The closeness of the islands States interspersed by dependent territories of the Caribbean Sea, particularly in the eastern Caribbean, will continue to have an important effect on the nature and quality of delimitation agreements.

Overlapping maritime claims are more the rule than the exception, even with respect to territorial sea claims, since some States are not able to realise a full twelve nautical mile claim in all directions of their coast. In many cases, the EEZ or exclusive fisheries zone will extend no more than 30 or 40 nautical miles in some directions from the coastal States' baselines from which the territorial sea is measured. A feature of potential delimitation areas stretching from the Atlantic coast of Guyana to the Puerto Rico-Dominican Republic area will be a series of relatively narrow EEZs and or continental shelves under each respective coastal States' jurisdiction. The geographic reality will highlight the need for a high degree of co-operation with the management of not only living and non-living resources, but also the environment and commercial sea-lanes through passages, straits and channels leading into and out of the semi-enclosed Caribbean Sea.

Similar considerations apply to known distribution of hydrocarbon deposits in the southern and eastern Caribbean Sea areas, where delimitation agreements have recognised the almost inevitability of geological structures straddling the maritime boundaries of neighbouring States. The same geological and geographic characteristics are believed to be present with respect to potential hydrocarbon deposits within undefined and un-delimited jurisdictions of some CARICOM Member States.

The archipelagic status of States within CARICOM may impact on boundary delimitation mainly through the acquisition of an additional zone of waters, archipelagic waters, between the inland waters and the territorial sea. Archipelagic States are obliged under the UNCLOS to respect traditional fishing rights of immediately neighbouring States in particular areas falling within archipelagic waters (see Article 51). An archipelago is defined "as a group of islands, including parts of islands, interconnecting waters and other natural features, which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such" (Article 46). Of the principal requirements to qualify as an archipelagic State, perhaps the most significant one for CARICOM States is meeting the water-land area criterion, that is to say, that the ratio of water to land lies between 1 to 1 and 9 to 1. Examples of CARICOM States meeting the stipulated water-

land ratio are Antigua and Barbuda, water to land ratio 7.3 to 1; Bahamas 9 to 1; Grenada, 1.6 to 1; and St. Vincent and the Grenadines, 2.4 to 1. The State of St Kitts and Nevis falls short of meeting the requirements for an archipelagic State, the ratio of water to land being 0.8 to 1.

The presence of small islands, islets, rocks, sandbanks and cays will impact significantly on maritime boundary delimitation in the Caribbean Sea. The UNCLOS accorded a special regime to islands. An island is defined as a naturally formed area of land, surrounded by water, which is above water at high tide, (Article 121). The regime permits an island to have a territorial sea, a contiguous zone, an EEZ and a continental shelf under the same rules that apply to other land territory. However, rocks, which cannot sustain human habitation or economic life of their own, are unable to attract an EEZ or a continental shelf. From the point of view of maritime boundary delimitation in the Caribbean Sea, the treatment of rocks in the UNCLOS is unhelpful, as it does not make clear what the definition of a rock is, and does not give much guidance as to the weight to be put on rocks in delimitation negotiations, despite being aware of the wealth of State practice on the matter from disparate geographic locations as the English Channel, the Adriatic Sea and the Persian Gulf. The several rocks and cays in the Caribbean Sea will create considerable geographic distortion in delimitation and will need to be corrected or mitigated in order for equitable results to be achieved. Perhaps the most important case in CARICOM in this regard is Aves Island, which has been under Venezuelan sovereignty since 1865.

Aves Island is of coral formation and lies 300 nautical miles northward of the Venezuelan mainland and 125 nautical miles west of Dominica. A survey in 1973 put the area at 10 .16 acres, 2,000 feet in length and a maximum height of 10 feet. The guano, which was once there, has long disappeared, although innumerable sea birds still inhabit the island. In 1978 the Venezuelan navy constructed a scientific research centre on the island. If Aves Island were to be accorded full weight and status as an island, generating its own EEZ and continental shelf, it would yield Venezuela about one-third of its entire maritime area, while costing the CARICOM States of Dominica, Montserrat, St. Kitts and Nevis, and St. Vincent and the Grenadines a total of approximately 7,350 square nautical miles. The USA and the Netherlands have each accorded full weight to Aves Island in boundary agreements concluded with Venezuela, while France (Guadeloupe and Martinique) has accorded almost full weight in its boundary agreement with Venezuela.

Another island that may have significance in delimitation in CARICOM is Navassa Island, which is an unincorporated uninhabited island claimed by the US, and which lies 30 miles westward of Haiti between that country and Jamaica. The Venezuelan islands, which are near to the coast of the mainland, will influence delimitation between that country and Grenada. The position of certain islands located between Jamaica and Colombia has been resolved in the boundary agreement between those two States, and so is the position of certain small islands, such as Desirade and the Saints between Guadeloupe and Dominica.

The large number of dependent territories in the Caribbean Sea is more a political than a technical or legal factor affecting boundary agreements in the area. However, it is a

relevant factor to be taken into account in any examination of maritime boundary delimitation in the Caribbean, since the dependent territories belong to metropolitan powers with considerable maritime areas and interests outside of the region. These powers may have interests outside of the region that are as important as those within the region and can thus be readily traded-off amongst themselves as a bargaining position during negotiations, or with the bigger Caribbean powers, such as Venezuela. This may well serve to explain the apparent concession made by the USA, the Netherlands and France in according full or almost full weight to Aves Island in their respective maritime boundary agreement with Venezuela. But the then Deputy Legal Adviser of the US State Department, Mr. Feldman, gave the reasons for the US treatment of Aves Island to the Committee on Foreign Relations of the Senate thus, “of course, the United States uses islands and rocks as base points for measuring the territorial sea and the 200-mile zone over a large percentage of the total stretch of the United States coasts. Islands are also relevant in that case. ...from the point of view of the national interest of the United States, the security interest, the resource interest, and control over as much area as possible, this principle serves our general boundary position very well.” Aves Island was used as a base point vis-à-vis the US Virgin Islands, as well as vis-à-vis the Dutch islands of Saba and St. Eustatius, while it was given almost full effect vis-à-vis Martinique and Guadeloupe in respective boundary agreements between Venezuela and the USA, the Netherlands and France.

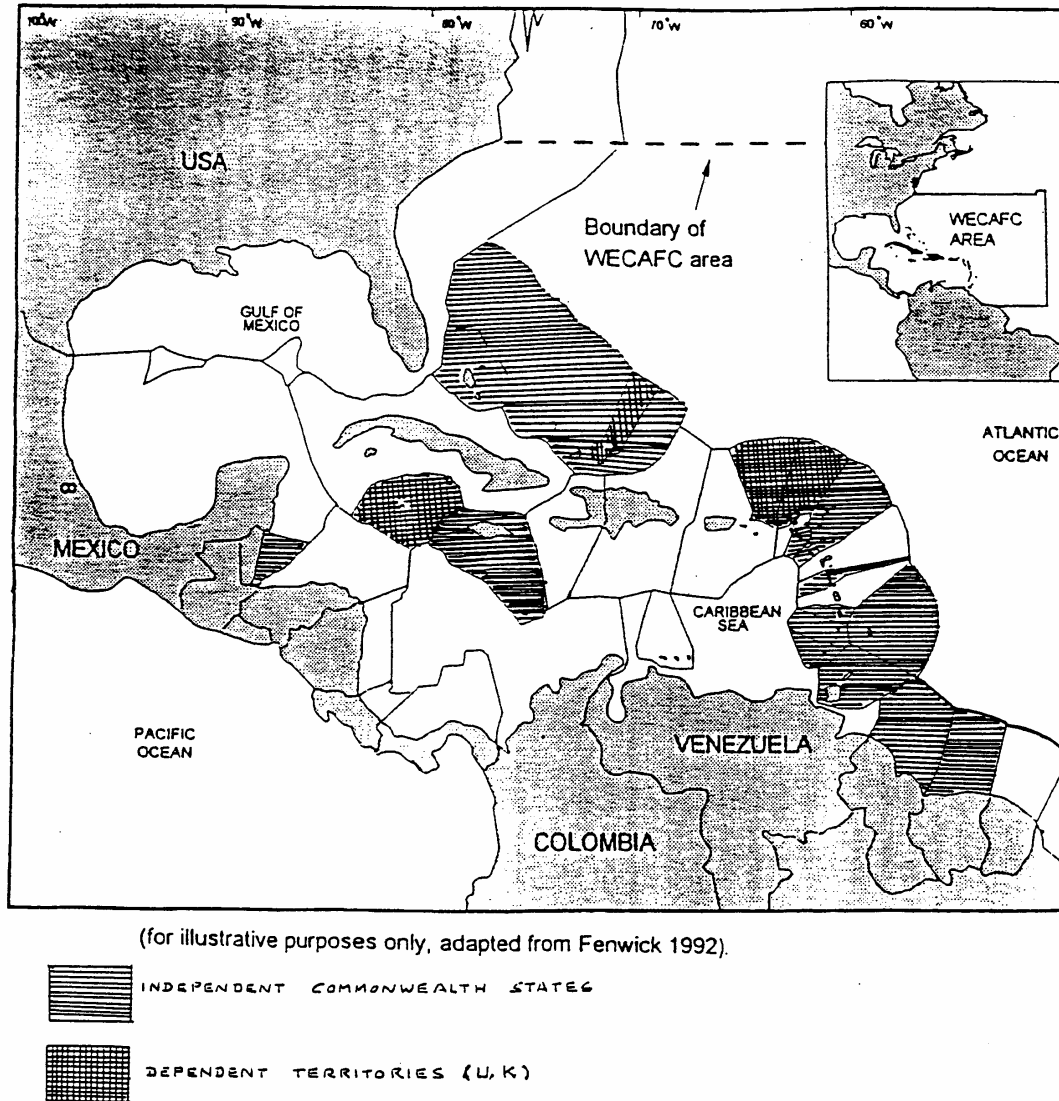
2.3.2 Outstanding Potential Maritime Boundaries’ Claims in CARICOM

CARICOM Member States have approximately 48 potential maritime boundaries to be delimited, of which only 7 have been finally settled, and one provisional arrangement, Guyana-Barbados 2003, has been agreed. A total of approximately 39 potential maritime boundaries remain to be delimited. However, the approximate EEZs based on a provisional equidistance delimitation of the Caribbean Sea are given in Fig. 2.⁴

A number of boundary negotiations have been going on for some time, or preparations for negotiations have long been made with little movement on either side, and are yet to be concluded. These cases include Antigua and Barbuda and France (Guadeloupe and St. Barthelemy), where negotiations began in the mid-1980s; Grenada and Trinidad and Tobago as well as Grenada and Venezuela, where in both cases negotiations started in the ‘90s without achieving an outcome; Dominica and Venezuela, where negotiations were deferred due to unrest in Venezuela in the ‘90s and have not been activated; Antigua and Barbuda and St Kitts and Nevis were both prepared for negotiations with their expert teams in place, but negotiations failed to get off the ground; and Jamaica and UK (Cayman Islands) have been moving at a slow pace since late ‘90s.

⁴ The map does not reflect Dominica’s EEZ.

Figure 2
The Approximate EEZs of the Caribbean Community Countries



The Associate Members of CARICOM have approximately 12 potential maritime boundaries to be delimited, of which 5 have been concluded, with 7 remaining. With respect to these dependent states, the picture is more encouraging than with CARICOM. There are ongoing negotiations between UK (Cayman Islands) and Cuba; contact has been made between UK (Anguilla) and the Netherlands (Saba); the internal boundary between Anguilla and the British Virgin Islands is soon to be completed, and the negotiations between UK (Turks and Caicos Islands) and the Bahamas are ongoing.

3 The Regional Fisheries Institutional Framework

3.1 Caribbean Regional Fisheries Mechanism (CRFM), Belize

The Caribbean Regional Fisheries Mechanism (CRFM) is a regional, inter-governmental organisation. It was established in February 2002 and evolved from the successful CARICOM Fisheries Resource Assessment and Management Programme (CFRAMP), which was funded jointly by the Canadian International Development Agency (CIDA) and the participating countries. The CRFM was officially launched in March 2003. Its goal is to promote sustainable development and conservation of the region's fish stocks to permit sustainable use of these resources by the people in the region. In the "Agreement Establishing the Caribbean Regional Fisheries Mechanism," the objectives and general principles of this Mechanism are as follows:

- (a) The efficient management and sustainable development of marine and other aquatic resources within the jurisdiction of Member States;
- (b) The promotion and establishment of co-operative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources;
- (c) The provision of technical advisory and consultative services to fisheries divisions of Member States in the development, management and conservation of their marine and other aquatic resources.

In pursuant of its objectives, the Mechanism shall be guided by the following principles:

- (a) maintaining bio-diversity in the marine environment using the best available scientific approaches to management;
- (b) managing fishing capacity and fishing methods so as to facilitate resource sustainability;
- (c) encouraging the use of the precautionary approaches to sustainable use and management of fisheries resources;
- (d) promoting awareness of responsible fisheries exploitation through education and training;
- (e) according due recognition to the contribution of small and industrial fisheries to employment, income and food security, both nationally and regionally, and
- (f) promoting aquaculture as a means of enhancing employment opportunities and food security, both nationally and regionally.

These clearly indicate that resource management is the primary objective and the provision of technical and consultative services is the secondary objective of the CRFM.

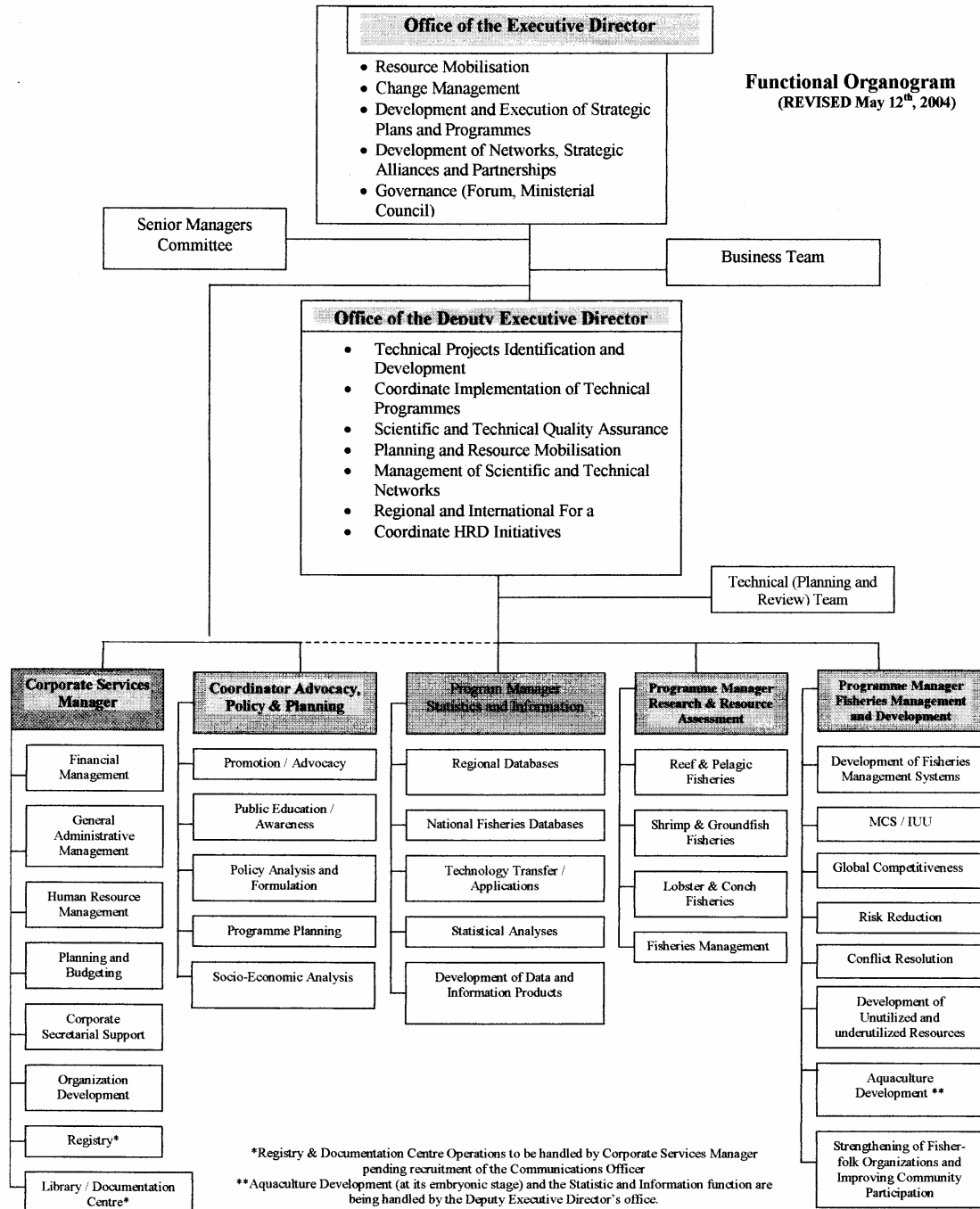
The Mechanism is composed of: 1) a ministerial council; 2) the Caribbean Fisheries Forum; and 3) a technical unit - the CARICOM Fisheries Unit (CFU). The Ministerial Council, consisting of Ministers of Fisheries of the Member States, determines the policy of the Mechanism. The Forum, consisting of representatives from Member and Associate Member States and observers from fisher folk and private companies, regional bodies and institutions and non-governmental organisations, determines the technical and scientific work of the Mechanism. The Technical Unit is the permanent Secretariat of the Mechanism. The functional organogram of this Technical Unit (the Secretariat) is given in Fig 3. It shows that the Unit has capability for policy and planning, research and resource assessment, fisheries management and development, and statistics and information.

At the inaugural meeting of the Forum, it was decided that it would take responsibility for the Common Fisheries Regime (CFR). In June 2003, a CFR Working Group met and agreed to a Plan of Action (POA) for the purpose of establishing the CFR in 2006. This POA was subsequently presented to the CARICOM Heads who approved the continuance of work in this area.

During the first year of its operations the CRFM concentrated on the following: co-ordinating fisheries in Member States; conducting research and resource assessments of regional and national stocks; strengthening fisher folk organisations and improving Community Participation; assisting in the development of fishing plans; developing strategic and work plans; securing, executing and managing externally financed programs and projects; networking with regional and international organisations; and representing CARICOM or its Member States at international fora. Although these constitute important services to regional and national needs, the CRFM has not been involved with the management of the exploitation of regional stocks, a guiding principle of the Mechanism and an indispensable requirement for sustainable fisheries development. However, the CRFM is in the process of making proposals for establishing regional fisheries management organisations (RFMOs) for large highly migratory and coastal pelagics, and for lobster and conch fisheries. These RFMOs are expected to enable co-ordination of statistics, research and management of these resources. The proposals call for the CRFM to be the initial organisation for these RFMOs, which will eventually be autonomous bodies. However, this approach could lead to: a) a proliferation of RFMOs by major species; b) the duplication of services (since each RFMO will require the same expertise) and higher costs for management; and c) increasing conflict and allocation problems between resource users.

The aspects dealt with in the above paragraph indicate that the CRFM seems intent on fulfilling its secondary role of being an advisory organisation to national fisheries units rather than fulfilling its primary role of being a management organisation for regional fisheries. This is reflected in its Strategic Plan covering the period 2003-2008 that identifies nine priority areas, the majority of which are more advisory than managerial. They are as follows:

Figure 3
Functional Organogram, Technical Unit of the CRFM



- 1) research and data analysis for policy formulation and decision making;
- 2) preparation for global competitiveness;
- 3) resource assessment and management;
- 4) human resource development and institutional;
- 5) strengthening of fisher folk organisations and improved community participation;
- 6) promotion of the expansion and utilisation of unutilised and under-utilised aquatic resources;
- 7) development and promotion of aquaculture;
- 8) development and promotion of a risk reduction program for fishers; and
- 9) development and promotion of programs for conflict resolution among multi-users in coastal zones.

It is unlikely that the Unit can do justice to all these priority areas, given that the current staff of the Technical Unit consists of 9 professional officers and 6 support staff. This indicates that, even after making allowances for staff expansion and a heavy reliance on outside consulting services, reducing the priorities to more manageable proportions is essential within the context of whether the CFRM could become the RFMO for the Caribbean Sea. In the section to follow, this aspect will be addressed.

4 Regional Fisheries Management Requirements for a Common Fisheries Regime

The General Assembly of the United Nations, on the initiative of Caribbean States led by CARICOM Members, adopted Resolution 54/225 of the 15th February 2000 for *Promoting an integrated management approach to the Caribbean Sea in the context of sustainable development*. The Resolution calls upon Caribbean countries to develop an integrated management approach in the context of sustainable development. CARICOM has taken the initiative for developing this approach. In February 2003, Heads of Government considered the issue of the adoption of a Common Fisheries Regime (CFR) and, as pointed out earlier, established the CRFM. At the inter-Sessional Meeting in 2004, the Heads mandated CARISEC to carry out the necessary research on a framework for the exploitation and conservation of fisheries resources in the region and agreed that in order to protect the Caribbean Sea, Member States will ensure the successful functioning of the CRFM and will in due course consider investing it with the authority to administer a Common Fisheries Regime. This section will therefore examine the management requirements for sustainable development of a regional fisheries management organisation. This will form an objective basis for assessing the shortcomings of CRFM and for indicating what measures and structural changes are necessary to transform it into an effective RFMO for the Caribbean Sea.

4.1 The CARICOM Common Fisheries Regime

The requirements of a Common Fisheries Regime include the following major elements: 1) the acceptance of a common fisheries policy and strategy; 2) demarcation of its fisheries Zone

and 3) an appropriate autonomous regional organisation for administering, implementing and enforcing the policy. This last aspect will be dealt with in section 5.

The acceptance of a common fisheries policy is the most critical factor in the establishment of a Common Fisheries Regime. The most essential element is that a common fisheries policy has implications for concerns about the perceived loss of sovereignty and the extent of cooperation required of Member States of the regime. From the sovereignty standpoint, there is little loss since no single state can exercise full sovereignty over regional or migratory stocks and, under UNCLOS, coastal States' full sovereignty over their 12-mile territorial sea is not threatened. The management of the Common Fisheries Regime, however, rests on a high degree of cooperation between States, with protocols on the salient aspects of licensing and control and on surveillance and enforcement.

4.1.1. The CARICOM Common Fisheries Policy

Considerations for CARICOM's common fisheries policy are based on the international marine and fisheries conventions since UNCLOS, including the strategy outlined in the Barbados Program of Action for SIDS. These are supportive of CARICOM's policy objective of sustainable fisheries development of the Caribbean Sea. The requirements for this sustainable development are dealt with in 4.2. The two most important aspects of a common policy pertain to: 1) agreement on access to the resources of the CARICOM Fisheries Zone by Member States; and 2) resource access of Third Parties (distant water fishing States) that have a historic presence in the region.

The access to resources within the CARICOM Fisheries Zone is governed by a UNCLOS proviso that stocks surplus to the coastal state capacity should be shared with other States. In a CARICOM regional context, the policy for access is that Member States have preferred access, not open access, to any surplus stocks in the region. However, the resource situation indicates that there are few large surplus stocks in the region, with the exception of Guyana, Suriname and, to a lesser extent, Belize, and these are mainly demersal resources. In 2000, fish landings in Guyana and Suriname amounted to 64,000 tonnes, accounting for 30% of the estimated MSY for this area (given in section 2.1). With respect to distant water fishing, access of nations with a historic presence, i.e., those that have fished continuously in the area over an extended period, can be permitted at existing levels or can be reduced over time. The existing arrangements, whereby access agreements have to be negotiated among coastal States in the region, will be regularised and formalised under a common policy.

4.1.2. The Implications of the CSME on the CARICOM Common Fisheries Policy

The question of access to resources was raised by a proposal to the Heads of Government of the Community at their fourteenth Inter-Sessional Meeting that argued strongly that the principles being advocated and pursued within the CARICOM Single Market and Economy (CSME) should not be limited to goods, services, capital and labour in respect to land mass of Member States but should also include the marine space of countries. However, the CSME will have to conform to UNCLOS and its supporting Conventions and Agreements that

indicate that sustainable fisheries development requires controls within the constraints imposed by the fisheries reproductive capabilities to sustain themselves. The common fisheries policy supports the CSME objective of providing greater access to fisheries resources for Member States' nationals and vessels. Since under the CSME, access to the resources should be accorded to all CARICOM Member States on a non-discriminatory basis, surplus stocks in both the regional fisheries and in the territorial waters of Member States will have to be shared on this basis. This will facilitate the intra-regional movement of capital, and possibly labour, in the fisheries in the region.

4.1.3 Demarcation of the CARICOM Common Fisheries Zone

In accordance with international precedence, the CARICOM Common Fisheries Zone can be established irrespective of the formal delimitation of all the EEZs in the region, although the full extent of jurisdiction over the fisheries zone would not be established without delimitation thereof.⁵ However, this Zone, based on declared EEZs of Member States, will not be a contiguous zone. It will consist of two relatively large sub-regions, which cover the Bahamas to Jamaica in the north and Suriname to St. Lucia in the south, that are interspersed with four small sub-areas: Dominica; the Leeward Islands of Montserrat, St. Kitts-Nevis, and Antigua and Barbuda; and Belize (Fig 2). In accordance with UNCLOS, the Fisheries Zone would consist of two sub-zones with respect to sovereignty and management responsibilities: 1) The Territorial Sea under the full sovereignty of the coastal States and therefore under the management of national fisheries units; and 2) The EEZ, where sovereign rights are shared collectively, that will be managed by the CARICOM RFMO.

The non-contiguous nature of the CARICOM Fisheries Zone indicates that extensive cooperation will be required with non-CARICOM States, particularly those sharing shelf or marine resources. Fortunately, with the exception of the US and UK dependencies and the Commonwealth of Puerto Rico, all the coastal States are members of the Association of Caribbean States (ACS) and CARICOM's policy with respect to the CRFM makes provision for the inclusion of these States in the membership of that organisation. See Appendix 1 for the membership provisions and their implications. There also has to be co-operation between the CRFMO and national fisheries units in both the territorial sea and the regional sub-zones with respect to common management issues.

4.2 Management Needs for Sustainable Development

The management regime for sustainable development will have to ensure that: a) the ocean environment is protected from land-based sources of pollution; and b) the fishing industry is managed so that it operates on a sustainable basis. With respect to the second, the goals of sustainable fisheries development are: 1) to protect the resource capability to sustain itself biologically, and 2) to provide good socio-economic returns to those engaged in harvesting the resource. In a regional fisheries context, national economic interest is paramount in relation to the interests of the exploiters (the fishers, private fishing companies).

⁵ As was done by USA, Canada and the European Union (EU).

From a regional fisheries point of view, the requirements for sustainable fisheries management are as follows: a) to establish a policy and strategy for regional management that conforms to international agreements on fisheries exploitation; b) to put in place an effective administrative and regulatory structure or organisation, including provisions for research, conservation and surveillance; and c) to implement management measures. (Mitchell & Swan, pp.18-20).

For a regional organisation to be effective, it should have the capability and responsibility for utilising all the measures available for fisheries management, which include:

- (a) seasonal closures or moratoriums;
- (b) vessel, mesh and gear restrictions;
- (c) vessel registration;
- (d) limited entry licensing mechanisms;
- (e) license, quota and royalty fees;
- (f) total allowable catch and fleet allocation regulations;
- (g) conservation regulations backed by effective enforcement.

RFMOs would be more effective if they were not confined to using biological measures only (such as TACs, closed seasons, and gear and mesh restrictions). Economic measures (such as quota fees, license and access fees, and royalties) provide strong support for the biological measures and can result in economic returns to Member States. The combination of biological and economic measures is an accepted feature of modern fisheries management.

In order to attain its goal, a RFMO for the Caribbean Sea should have the following functions and responsibilities:

- (a) To assess, review and monitor the state of fisheries resources under its jurisdiction by appropriate research and surveillance and enforcement activities;
- (b) To establish and allocate TACs for its Member States based on objective criteria for doing so;
- (c) To manage the exploitation of the TACs by means of both biological and economic measures;
- (d) To review the socio-economic aspects of the fisheries under its jurisdiction to ensure they are consistent with Member States' development policies;
- (e) To provide technical and advisory services, as required, to national fisheries management units;
- (f) To liaise with other international fisheries institutions or organisations that are relevant to the region; and

- (g) To provide public information regarding its activities and the economic implications of its programmes.

These functions and responsibilities will determine the changes needed in the structure of the CRFM in order for it to become an effective RFMO for the Caribbean region. These functions and responsibilities indicate that the major operational elements of the CRFM should be:

- (a) Policy formulation;
- (b) Scientific assessment of stocks;
- (c) Regulatory and licensing; and
- (d) Finance, Administration and Public Relations.

The existing structure lacks the capacity for (c), and it is in this area that structural changes will be advocated later in section 5. However, there are certain principles and approaches to sustainable development to which the CRFM will have to adhere.

4.3 The Code of Conduct: Principles and Approaches for Sustainable Development

The FAO *Global Code of Conduct for Responsible Fisheries* should be the guiding principle of a CARICOM Common Fisheries Regime since it reflects the provisions of several fisheries-related international instruments including:

- United Nations Convention on the Law of the Sea (UNCLOS);
- Provisions of UNCLOS of 10 December Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (i.e., 1993 FAO Compliance agreement);
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (i.e., 1993 FAO Compliance Agreement)
- 1992 Rio Declaration on Environment and Development; Chapter 17 in Agenda 21 of the United Nations Conference on Environment and Development (UNCED).

Article 6 of the Code sets out general principles that are summarized as follows: Maintaining biodiversity and utilizing ecosystems approaches to management; Managing fishing capacity and fishing methods to facilitate resource sustainability; Using precautionary approaches to sustainable use, management and exploitation; Protecting and rehabilitating critical fisheries habitats and the environment generally; Using post-harvest practices that maintain nutritional value and quality of products; Including fisheries interests in all aspects of management planning and development; Establishing effective mechanisms for monitoring, control and surveillance; Collecting and providing data including sharing, pooling and information exchanges; Ensuring that fisheries decision making processes are transparent and that all stake holders have the opportunity to participate; Conducting trade in fish and fishery products according to applicable

agreements; Cooperating with States in order to prevent disputes or resolve them in a peaceful manner; Promoting awareness of responsible fishing through education and training; Ensuring safe, healthy and fair working and living conditions for fishery workers; Recognizing the contribution of small scale fisheries to employment, income and food security; and Promoting aquaculture as a means for diversification and diet.

4.3.1 The Precautionary Approach for Sustainable Development

The precautionary approach has become an essential feature of modern fisheries management, particularly since Agenda 21 and the FAO *Global Code of Conduct for Responsible Fisheries* in 1995 that enshrined the precautionary approach as a basic approach for sustainable fisheries management and development (Juda, Lawrence, 2002). This approach is of great relevance to regional fisheries organisations, particularly because of the number of countries involved in regional fisheries and straddling stocks issues.

Article 6.5 of the Code on General Principles reads as follows:

“States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific advice available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and their environment.”

The specifics for implementing this approach are given in Article 7 - Fisheries Management, where it is pointed out that in implementing the approach, States, sub-regional fisheries management organizations, or regional fisheries management organizations should:

- 1) Take “into account, *inter alia*, uncertainties relating to the size and uncertainties of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities, including discards, on non-target and associated or dependent species as well as environmental and socio-economic conditions.”
- 2) Determine on the best scientific evidence available, *inter alia*:
 - a) stock specific target reference points, and, at the same time, the action to be taken if they are exceeded; and
 - b) stock specific limit reference points and at the same time, the action to be taken if they are exceeded; when a limit reference point is approached, measures should be taken to ensure that it will not be exceeded.

Article 7 also points out that if a natural phenomenon has a significant impact on the status of living aquatic resources, states should adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate the adverse impact. The

precautionary approach is therefore a versatile one making allowances not only for fisheries specific problems but also for acts of natural disasters such as hurricanes and typhoons.

The management implications of the precautionary approach are affected by whether the stocks to which they are applied are national, in that they are fully within the EEZ of the coastal state, or are regional, in that they are shared by many states. If stocks are national, establishing reference points and allocations require discussions with fishing communities, i.e., co-management. If stocks are regional, states would have to consult and collude in establishing reference points and in allocating stocks and limits among them. This is not an easy task, but it can be facilitated if there are regional institutions for fisheries management.

The implementation of the precautionary approach involves the following phases (Mitchell & Swan, pp. 31-32):

1. Development of an Operational Plan for Exploitation: An operational plan covering the period of years thought necessary for a scientific assessment of stocks during which fishing effort would be rigidly controlled, based on limit or target reference points. This is accomplished by indicating the number of vessels that will be licensed to fish in year 1, with vessel (or effort) increments to the fleet for every year of the operational plan.
2. Monitoring of the Operational Plan: The impact of new vessels on total catches and catch rates (CUPE) would be carefully monitored during the period. If total catch rates and economic returns per unit of effort begin to decline, limits must be imposed during the period.
3. Establishment of TACs: Once there is adequate scientific assessment, based on research and data provided during the operational Plan's period, then TACs can be established in the usual manner.

The precautionary approach is very relevant as an operational management measure in the regional fisheries. In the next section the institutional framework for regional fisheries management will be dealt with.

5 Policy and Institutional Framework for a CARICOM Common Fisheries Regime

The policy and institutional framework for a Common Fisheries Regime (CFR) for the CARICOM region will be examined in this section. This framework will:

1. Stipulate guidelines for exploitation and conservation of fisheries resources in the Region;
2. Develop a clear and transparent policy for the granting of fishing access to third countries;

3. Develop security procedures and a reporting system for use by Coast Guard, Customs and Immigration and other relevant bodies;
4. Outline a system of technical standards and best practices in fisheries management in keeping with international standards for the export of fishery products; and
5. Identify a common maritime authority to manage resources, cooperate in research, and provide technical support for ongoing fisheries projects in the Region.

This last aspect will be dealt with in terms of transforming the CFRM into a RFMO in accordance with the CARICOM Heads' decision, pointed out earlier, to invest the CRFM with the authority to administer a Common Fisheries Regime.

5.1 Guidelines for the Exploitation and Conservation of Fisheries Resources of the Region

The following guidelines are based on meeting the requirements of sustainable development of fisheries in the region and on the CRFM being the RFMO for the Caribbean Sea, with national fisheries units and coast guards being the implementing agencies of the CRFM. They cover: (i) rules on the operation of the common fishery zone; (ii) development of a licensing system; (iii) creation of a quota system that would guarantee sustainable harvesting; (iv) development of a system to determine the yearly allowable catch; (v) development of a system for the documentation of catches and landings; and (vi) development of a system for ensuring compliance.

5.1.1 Rules on the Operation of the CARICOM Common Fishery Zone

The rules should indicate that the CARICOM Fisheries Zone will be managed on a sustainable basis by a regional authority, the CRFM, and that free and open access to the resources of this Sea is prohibited. The rules therefore pertain to licensing registration, conditionalities for access, vessel operating practices in conformity with the guiding principles of the Code of Conduct for Responsible Fisheries, rights of passage of fishing vessels in the region, and penalties for contravening the fishing regulations in the zone. There should be an exclusion sub-zone within the territorial sea limit for the industrial fleets in order to avoid conflict with artisanal fishermen operations and also with the establishment of marine parks or fisheries protection areas. This exclusion sub-zone could differ between the States depending on traditional artisanal operations. Some of the measures relevant to these rules are dealt with in more detail below.

5.1.2 Development of a Licensing System

The development of an appropriate licensing system is critical, since it is one of the most important measures for the management and control of fishing effort. This system provides an opportunity to attain basic information on vessels, to establish conditions for access, and to attain revenues. The guidelines for this system are the following: 1) the CRFM should be the

sole authority for the licensing of vessels that are engaged in the regional fishing operations for the highly migratory and migratory stocks; 2) conditions for licensing should include agreement for compliance with the regulations of the zone with respect to area of operations, data gathering and reporting, and vessel monitoring (satellite surveillance); and 3) differential vessel license fees should be based on the size of vessel and on whether the vessel is a coastal or Member State one or from a distant water State.

The CRFM should have the authority to exercise overall control on the number of fishing licenses in the CARICOM Common Fisheries Zone since this is a critical element in controlling fishing effort, without which sustainable development is not possible. If the authority to license fishing vessels is left to Member States, it will not be possible to exercise this overall control on licenses and their conditions. However, although the CRFM would be the licensing authority for the regional fisheries mentioned, applications for licenses could be made through the fisheries units of Member States that would then submit them to the CRFM for approval. Vessels granted a license would pay the fees to the CRFM. The revenues from the licenses should be shared between the CRFM and the coastal State. For example, it could be agreed that 75% of fees from the distant water fleets would accrue to the CRFM and 25% to the coastal State in which they are based; and 75% of fees from coastal State fleets would accrue to the coastal State in which they are based and 25% to the CRFM.

The vessels to be licensed by the CRFM are mainly industrial fleet vessels consisting of decked vessels capable of operating for long periods at sea and ranging in size from intermediate to large i.e., large tuna longliners of the distant water fleet, intermediate sized tuna longliners of Member States, foreign and domestic shrimp trawlers, and intermediate size flyingfish, groundfish and crustacean vessels. For the purpose of this report, vessels whose length overall is 20m (60ft) and over are considered large, and those under 20m are considered intermediate. Artisanal boats and canoes, generally under 8.3m in length, will be licensed by national fisheries units.

With respect to the question of appropriate license fees, the CARICOM region has traditionally resisted charging for the right of exploiting the fisheries resources, and where fees are charged they are nominal in nature. In this respect, the value of fisheries resources is underrated and the region gets little return from the management of fisheries. It is important that the CRFM should impose license fees that reflect the value of the resources that are being exploited and that result in some economic returns from these resources. In this report, a combination of vessel license and quota fees is proposed as the means of realising economic returns from the industrial fleet that will contribute to meeting the costs of sustainable management by the CRFM. For example, based on license fees imposed on distant water tuna fleets in the South Pacific,⁶ annual license fees of US \$30,000 for vessels under 20m and \$50,000 for vessels 20m and over constitute reasonable fees for operations in the CARICOM

⁶ In the South Pacific, license fees for American tuna vessels averaged US \$52,000 during the 1980s and were increased to \$72,000 in the 1990's [Herrick, S. F., B. Rader and D. Squires (1997), "Access fees and economic benefits in the Western Pacific United States purse seine tuna fishery," *Marine Policy*, vol.21, number 1, January 1997].

Common Fishing Zone. Member states vessels could be charged 50% of the fees for the distant water states, i.e., \$15,000 for vessels under 20m and \$25,000 for the larger ones.

5.1.3 Creation of a Quota System for Sustainable Harvesting

The pertinent aspects of a quota system are quota establishment, allocation, and marketing. In accordance with UNCLOS, quota allocation in a regional context depends on the capacity of the coastal states in the region to take the overall quota established for the region, with any remaining surplus being shared with non-coastal or foreign states. This principle applies intra-regionally, except that the coastal state with a surplus should give preferential access to other coastal states of the region. In the CARICOM Fisheries Zone, only Guyana, Suriname and Belize have some surplus demersal stocks that would be available to other Member states. The highly migratory large pelagics and billfishes under ICCAT, and possibly squid and octopus, constitute the only stocks that might provide a surplus to regional and foreign fleets.

The sale of quotas has become a feature of international fisheries, and is based on the premise that the coastal state is entitled to an economic return from its resources (resource rent). Quotas or access fees should be established in the Common Fisheries Zone based on 3% to 5% of the value of the Quota, as determined by primary (ex-vessel) market prices. Quota fees from access agreements by the European Union to countries in the Indian Ocean and in the South Pacific are much higher than 5%. However, an access fee of at least 5% of the mean price for tuna would result in the following fee structure per tonne of quota:

Skipjack	US \$40.00
Yellowfin	US \$55.00
Albacore	US \$110.00

Foreign governments, who can then recoup these fees from their fishing enterprises, should pay the quota fees. Industrial vessels from Member States should also be required to pay access fees, but these can be less than those charged to foreign vessels.

5.1.4 Development of a System to Determine the Yearly Total Allowable Catch

The standard method of developing Total Allowable Catches (TACs) involves the following steps: 1) the scientific estimates from resource assessments of the maximum sustainable yields (MSYs) or sustainable yields (SYs) from the application of the precautionary principle and approach outlined previously; 2) the establishment of TACs from the MSYs, based on a precautionary factor of 5% to 10% less than the MSYs, depending on the reliability of the estimates and type of resources; and 3) the allocation of the TACs to the respective coastal or other States exploiting the resources based on the quota system mentioned above. The first two steps will be handled by the scientific working groups and the third by the Forum. Where the TACs or quotas are established by international organisations such as ICCAT, the CRFM involvement will focus on the allocation of the regional quota between regional and distant water fleets and their compliance with their allocation.

5.1.5 *Development of a System for Documentation of Catches and Landings*

The provision of statistics on catches and landings is a basic conditionality of the licensing regime. The data will enable catch per unit of effort (CPUE) to be determined, which is essential for the scientific estimation of stocks. Standardized logsheets will have to be developed or adopted from ICCAT or from the FFA, and reporting rules established. The logsheets should be completed daily and returned to the licensing country within a specified period, and accurate records of all catch discarded at sea or transshipped or unloaded offshore must be submitted to the licensing country (A.H. Richards, p. 4).

5.1.6 *Development of a System for Ensuring Compliance*

Surveillance and enforcement constitute another important requirement for sustainable development and necessitates the establishment of an effective compliance system for the region. The major elements of such a system are: the establishment of a Register of Regional and Foreign Fishing Vessels (RRFF); the operation of a vessel monitoring system; the placing of observers aboard foreign vessels; sea and air surveillance; boarding and port inspection rights; penalties for non-compliance; and the securing of local agents to represent foreign fleet participants.

Vessels licensed to fish should be placed on a RRFF, which is a database of vessel characteristics (size, type, no. of crew, area of operations, etc.) that would be provided from the application for license forms. The CFRM would then be responsible for the Register and for its dissemination to Member States on an annual basis.

A vessel monitoring system (VMS) is a technical system that enables a vessel's position to be reported to a monitoring station utilising satellite technology. The FFA utilises the Inmarsat, which is an international organisation providing worldwide mobile satellite communications for the maritime community. The system involves installing an Automatic Location Communicator (ALC) on each vessel licensed to fish and on the RRFF. The ALC is a small unit consisting of a Global Positioning System and an Inmarsat C unit that monitors the vessel's position. The position information is transmitted to an Inmarsat satellite where it then transmitted to a Land Earth Station (LES) and from there to a VMS hub-site computer in the CFRM. This system has been found by the FFA to be the most economical and efficient one for small states. Among its benefits: it is a cost effective method of providing support to compliance and monitoring; it enables targeting of selected vessels by patrol boats and surveillance flights; it fosters regional solidarity; and it increases safety at sea and improves response time to emergency calls. It also benefits fishing operators by improving communications, providing increased safety at sea and more timely weather information.

Observers constitute another form of monitoring and reporting. The licensing country can place observers on board foreign fishing vessels for scientific, compliance, monitoring and other functions. The observer is entitled to officer-level accommodation, and the vessel operator is responsible for the cost of the observer's travel, salary and insurance (Richards, p. 4). Regular training programs for observers would have to be instituted by the CFRM. With

a VMS system in effect, the need for observers will be minimised, and they can be used sparingly on selected larger foreign fishing vessels.

Ship and air surveillance will have to be coordinated. Sea surveillance will require the coordination of the coast guard vessel activities of the Member States. This has been done successfully in the OECS. This requires some legislative changes to permit chase, boarding and seizure by coast guard vessels in the Fisheries Zone. Vessels caught infringing on the regulations could be escorted to the appropriate port in the Member country in whose EEZ area they were arrested. Air surveillance can also be coordinated from time to time.

5.2 System for Best Practices in the Handling and Export of Fisheries Products

In the Caribbean region there are three areas of concern: a) discards of fish, b) post-harvest losses (handling techniques on ship and shore) and c) meeting the phytosanitary conditions for marketing and export of fish products to the US and the EU. The discard problem, which is a serious one in the shrimp fisheries, requires specific regulations (the introduction of regulations greatly reduced the discard problems in the shrimp fisheries of Guyana and Suriname). Fish handling and sanitary regulations for fish on vessels and on shore are also relevant in order to reduce post harvest losses and to meet the phytosanitary conditions for international marketing.

The Member States or the CRFM would have to take measures through legislation or regulations, in accordance with international law, to exercise the power of port States over fishing vessels in their ports, whether or not they are authorised to fish in the EEZs of those countries. Such measures should include the power to board fishing vessels to inspect their documentation and to carry out such measures necessary for the conservation and management of fish stocks” (Richards, p. 4).

5.3 A Clear and Transparent Policy for the Granting of Fishing Access to Third Countries

Foreign or distant water vessels or fleets (third countries) should be allowed access into the CARICOM Common Fisheries Zone based on their meeting the following criteria: a) an historic presence in the region and an entitlement to access either by means of a quota allocation from an internationally recognised management authority, e.g., ICCAT, or from the CRFM, and b) a regional fishing license from the CRFM and agreement with the conditionalities of this license, i.e., the paying of fees for licenses or catches, submitting annual fishing plans indicating proposed fishing areas, the carrying of transponders or ALCs, the paying for observers on board, and the regular provision of statistical data on catches and landings. The conditionalities attached to vessels from neighbouring non-CRFM States, for example, Guadeloupe and Martinique, may be less onerous than those applicable to commercial distant water fishing vessels.

5.4 Security Procedures and Reporting System

Security procedures are covered in some of the previous measures, i.e., surveillance and enforcement, inspection, port state power, etc. Countries should be required to provide the CRFM on an annual basis with fishing plans and reports on the state of their fisheries, particularly their regional fisheries, using a standard framework. The CRFM could then compile these in annual reports on regional fisheries that could identify problem areas.

5.5 Transforming the CRFM into an RFMO

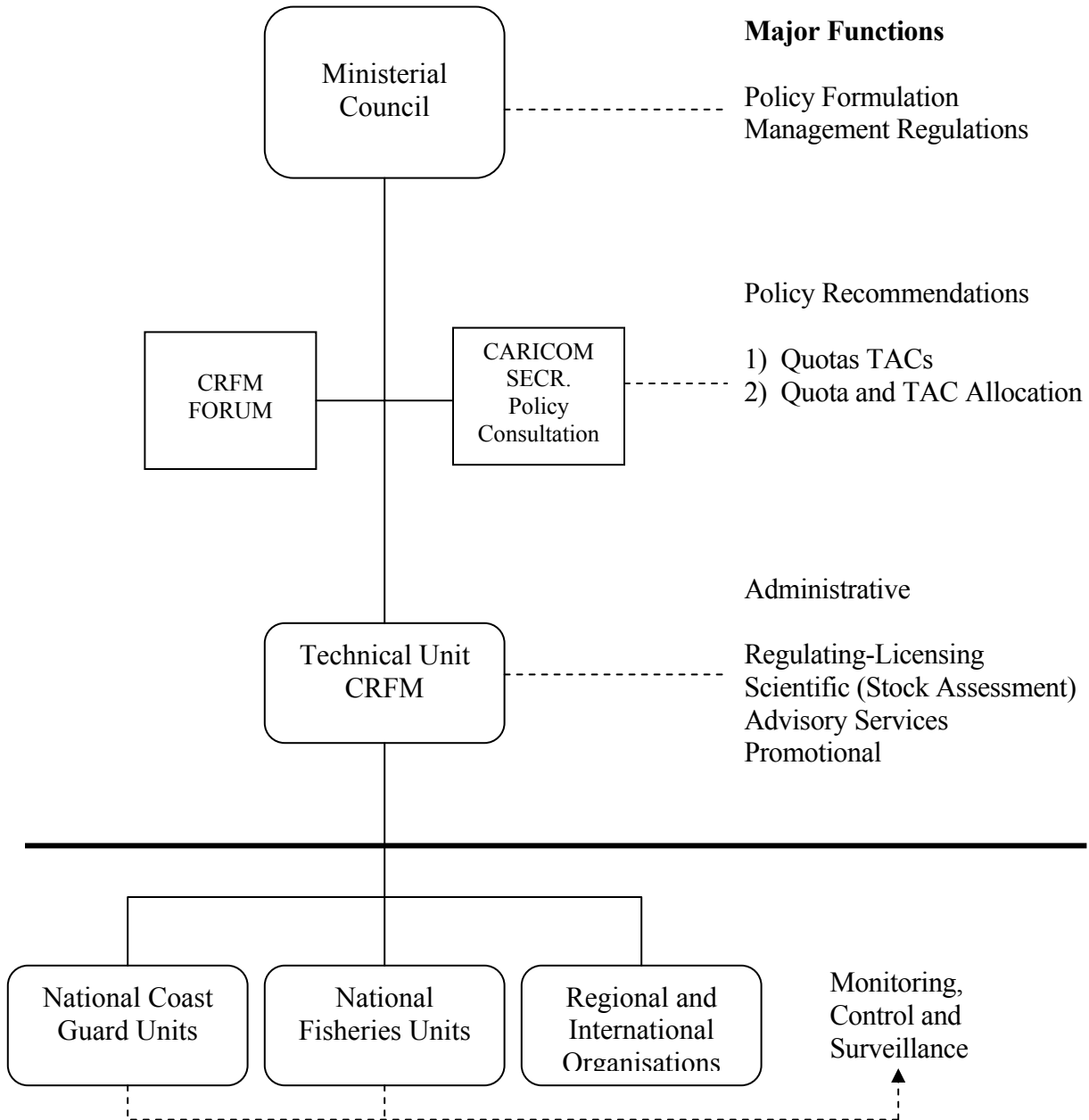
It is apparent that the Technical Unit of CRFM, as presently structured and staffed, lacks the operational capacity to be an effective RFMO. However, this Unit has most of the elements necessary for such an organisation, and its mandate and stated objectives are fully consistent with those of an RFMO. It can therefore be transformed readily into an RFMO. The critical elements missing are the lack of effective measures for quota setting and allocation, for controlling and monitoring fishing effort, and for the enforcement of regulations in the region.

The CRFM also has to be clear about its mandate and responsibilities. Given the nature of regional fisheries, the CRFM should concentrate on: 1) the management of the migratory stocks; 2) straddling stocks; and 3) stocks that pose common problems to many States in the region (spiny lobster and conch). Artisanal fisheries management, mariculture and aquaculture development, and support for mainly artisanal fishermen's organisations should be left to national fisheries management units. This division of management responsibilities will permit the CRFM to perform both its primary management and secondary advisory functions to fisheries units, and therefore to artisanal fisheries, more effectively.

The operational structure for this type of arrangement is shown in Fig. 4. The national fisheries units and the coast guard will be required to carry out some implementation functions for the CRFM. The governments of distant-water-fleet countries will have to apply for quotas and licenses from the CRFM. The national fisheries units will process the applications for licenses from foreign operators wishing to use a Member State as the base for their operations and for the collection of logsheets and monitoring of catches. The coast guard and port authorities, in collaboration with the national fisheries units, will provide the surveillance and inspection services. The roles of the Member States envisaged necessitate the utilisation of appropriate protocols covering: a) licensing and allocation; and b) surveillance and enforcement.

Cooperation and networking with regional and international institutions constitute an important operational element, particularly with the universities and with regional indigenous institutions (RIOs). The CRFM has made good progress with networking and with attracting donor agencies contributions to its project programs. It is currently embarked on an in-house examination of institutions and possible strategic partners that will enable it to function more effectively. However from a regional fisheries management standpoint, the relationship between the CRFM and ICCAT is a critical one that requires immediate attention.

Figure 4
Operational Structure of the CRFM



5.5.1 *Relationship with ICCAT, the Large Pelagics*

The International Commission for the Conservation of Atlantic Tunas (ICCAT) is responsible for the management of tuna and tuna-like resources (large pelagics) in the Atlantic Ocean and its adjacent seas. ICCAT coordinates the management of the large pelagics stocks in the region, including the allocation of national quotas for tunas. In accordance with new allocation criteria, only countries that are members (Contracting Party or Co-operating Party) of ICCAT will receive catch shares. For non-ICCAT member countries, ICCAT is able to impose a trade embargo on their exports. Since at present only Trinidad and Tobago, Barbados, and the British dependent territories of Anguilla and the Turks and Caicos are members of ICCAT, a number of other CARICOM member countries such as Grenada, St. Vincent and the Grenadines are at risk. It is possible, however, for all CARICOM Member States to be represented in ICCAT on a regional basis, under the auspices of the CFRM. The CFRM would then be responsible for controlling the exploitation of the ICCAT regional allocation. Specifically it will have to: (i) maintain a regional database on the fisheries concerned; (ii) coordinate research and assessments of the stocks concerned; and (iii) develop and implement appropriate management measures. Member States of CARICOM will be responsible for meeting the fees for regional membership in ICCAT and for providing the relevant data required by ICCAT. [CRFM Discussion Paper (2003), "Evaluating options for sustainable development, management and conservation of large pelagic fish resources in the CARICOM/ CFRM countries." First Forum Meeting].

5.5.2 *Institutional Strengthening of the CFRM*

To perform the duties of managing a common fisheries regime outlined in sub-sections 5.1-5.5, the CFRM has to be institutionally strengthened. It has been pointed out that a fisheries management organisation should be: 1) operationally viable, i.e., have all the elements to carry out its tasks efficiently and effectively; 2) financially stable, so it can plan effectively; and 3) capable of generating revenues to defray management costs from Member States (Rainford & Mitchell, p. 66, op. cit.).

In terms of organisational changes, the CFRM will be required to add a management section to the existing structure under an assistant director responsible for Fisheries Management and Development, thereby resulting in two assistant directors, with the other being assistant director of Research and Resource Assessment. The Fisheries Management Section would consist of three main elements: regulations and licensing, surveillance and enforcement, and the supporting vessel monitoring system. The addition of these elements will require the appropriate changes in the existing organisation structure involving some minimal rearrangement of functions. Four new professional staff will be required: a qualified coast guard officer for surveillance and enforcement, two officers with degrees in fisheries or environmental management for licensing and regulations, and an officer responsible for the operation of the VMS system. The operation of the proposed vessel monitoring system (VMS) would require a VMS hub-site computer and training in its use to the officers in the new section.

Based on existing salary scales, the cost of the proposed changes are as follows:

	(US\$)
Salaries and emoluments (4 positions).....	320,000
Capital & operating costs (VMS)	60,000
Total cost.....	380,000

The total cost amounts to US \$380,000 in the first year, and this would increase the total annual contributions of Member States to \$830,000. The increased contribution can be recouped from the combination of license and access fees proposed as well as from membership contributions from Associate Member States. For example, license revenues from the 50-60 tuna longliners based in Trinidad and Tobago could amount to about \$2.4 million a year. The proposed CRFM share of 25% of these revenues would amount to \$600,000 a year. The main point to be made is that there is the potential for revenue generation from the industrial fleet in the region that can make a significant contribution to management costs.

5.5.3 Securing Regional and International Approval of the CRFM as an RFMO

The transformation of the CRFM into a RFMO requires the acceptance of CARICOM Member States and that of the international community as represented by the General Assembly of the United Nations and UN agencies. For the latter, CARICOM will be required to register the CRFM with the UN Secretariat as the RFMO for the CARICOM Region and the Caribbean Sea. The recognition of the Caribbean Sea as a special area for sustainable development provides the opportunity for the CRFM to become the RFMO for this Sea. Since, as pointed out earlier, this recognition is a hollow one without an adequate management mechanism, fisheries will constitute an important segment of this mechanism. In fact, the development of ocean management mechanisms in some countries such as France and Canada have been based on expanding the capacities of fisheries departments into other areas such as the environment, oil and gas and shipping. However, the support of non-CARICOM States in the Caribbean for the CRFM as a RFMO will play a major role in terms of attaining international recognition and acceptance. This support will be dependent on their active participation in the CRFM as Associate Members. CARICOM should therefore, at some early stage, present its strategy and plans for its Common Fisheries Regime to other Caribbean countries and to countries that own distant water fleets that have traditionally fished in the Caribbean Sea.

It is critical that CARICOM Member States support the role and changes proposed for the CRFM. Member States' concerns about the CRFM's playing the role of a RFMO relate to the following: a) loss of sovereignty; b) centralised management by an RFMO, in contrast to de-centralised management with a regional strategy but with the national fisheries units playing the major role; and c) that artisanal fisheries concerns and management will not be given the attention they deserve. With respect to the loss of sovereignty allegation, jurisprudentially the contention is somewhat fallacious, since the common fisheries policy and

regime would be achieved through the *exercise of sovereignty*, which a Member State could exercise at any time to withdraw from the regime and the CRFM. De-centralised management prevents overall control of fishing effort to be exercised, without which sustainable fisheries is not possible. The concerns pale in face of the likely benefits of regional management. These are: 1) sustainable development of fisheries (prevention of over-exploitation); 2) increased participation of Member States in the developing fisheries in the region, i.e., in areas where there are surplus stocks; 3) increased returns in terms of license and access fees from the operations of third States' fleets in the region (by means of establishing fishing agreements with these States); 4) the increased contribution from the revenues generated from license and access fees toward meeting fisheries management costs in both regional and national (artisanal) fisheries; and 5) improving the balance of trade in fisheries products in the Region by import substitution.

Consultation with CARICOM Member States and Non-Member States constitute an important element for achieving support and acceptance of the role of the CRFM as an RFMO at the Regional level. This consultative process should be multi-disciplinary in nature and should determine the form and structure of the CRFM and its operational arrangements and procedures. Based on the results from the consultations, appropriate protocols will be required covering: licensing and allocation; surveillance and enforcement; and changes in the Agreement Establishing the CRFM. CARICOM should convene a legal workshop for this purpose.

6 Delimitation in the Caribbean Sea: The Way Forward

6.1 Options for Amicable Maritime Settlement in CARICOM

Differences over maritime boundary delimitation have begun to appear between Member States of CARICOM, with less than one quarter of the potential boundaries settled. It is important that urgent practical steps be taken to ensure that maritime boundaries be settled amicably without acrimony and in a cost-effective manner. An appropriate strategy, which involves the CARICOM and OECS Secretariats, should be devised to assist Member States to undertake boundary negotiations. There are some Member States that have the required expertise and financial resources to undertake such negotiations, but those States that are not able to do so may need assistance to negotiate even with other CARICOM States in order to create a level playing field in negotiations.

Maritime boundary delimitation is in essence a bilateral matter between the coastal States involved, but the preparation for negotiation can be done to a large extent on a multilateral level in appropriate cases. For example, it would be prudent for the OECS Members affected by the geographic location of Aves Island to take a common position on the treatment of that island for the purposes of delimitation of boundaries with Venezuela.

The exploitation of natural resources, living and non-living, in the CARICOM region is also a reason to examine the ways in which the definition of each Member State's

jurisdiction would facilitate improved utilisation of such resources. A common fisheries regime may operate with greater efficiency if the full extent of the common area of jurisdiction is defined.

The potential maritime boundaries claims yet to be settled can be conveniently grouped in five categories, namely, CARICOM Member States and metropolitan powers; CARICOM Member States and other Caribbean States; intra-CARICOM (other than OECS Members); CARICOM Member States (other than OECS Members) and OECS Members; CARICOM (other than OECS Members) and OECS Members, and intra-OECS Members. It is of interest to note that the majority of maritime boundaries delimited thus far by CARICOM countries fall within the first and second categories. Indeed, so far only the Guyana-Barbados Agreement of 2003, which is a provisional arrangement under UNCLOS, has been concluded between two CARICOM Member States, and there is no delimitation agreement between an OECS and a CARICOM (not being an OECS Member) State or between two OECS Members.

It is tempting to propose an orderly progression from the first to the fourth categories of potential delimitations set out above, or the other way, that is, from the fourth to the first category, but from a pragmatic viewpoint, that approach might not be attractive to some States, which have their priority in resource exploitation. The States concerned should therefore be willing to indicate their preferences and seek assistance and facilitation through the CARICOM or OECS Secretariats, as the case may be.

The role of the respective Secretariats should be clearly stated and perhaps be limited to preparatory assistance in technical areas. There should be guidelines to re-affirm the neutrality and impartiality of Secretariat staff in the preparatory assistance offered. Where two or more CARICOM States or two or more OECS Members are involved in negotiations, personnel from the respective Secretariats, should not be involved, except as observers to the proceedings. If the respective Secretariats offer preparatory assistance to a Member State, any other Member State, whose interest is likely to be affected, should be offered similar assistance.

6.2 Best Practice Approach to Preparation for Negotiation

In order to optimize its claims during the negotiation of maritime boundary agreements, every CARICOM State should ensure that it has in place the following:

- 1) Relevant up-to-date maritime legislation;
- 2) A hydrographical and technical report; and
- 3) A negotiating brief.

There are CARICOM Member States that have enacted up-to-date maritime legislation that takes account of the provisions of the UNCLOS, particularly those articles dealing with the delimitation of the various maritime zones. There should be an audit of maritime legislation in CARICOM States to ascertain the current standing of such legislation. It

should be remembered that legislation that is consistent with the UNCLOS is the best way to achieve maximum claims to maritime jurisdiction. The choice of base points, archipelagic or otherwise, may influence the size and shape of maritime areas claimed. A proper legislative framework creates the legal environment best suited for undertaking the important task of hydrographical and technical survey, which should form the basis for constructing charts and maps of the maritime areas of a particular State.

Every CARICOM Member State that is about to commence negotiation in respect of maritime boundary delimitation should cause a hydrographical and technical survey to be carried out by an experienced and qualified hydrographer. The survey should include a technical report accompanied by charts and maps showing base points and potential geographic coordinates for the provisional boundaries with neighbouring States. In appropriate cases, the report should address the question of whether or not the State satisfies the technical criteria set out in the UNCLOS for an archipelagic State. On the technical aspects, the survey should address the issue of the use of an appropriate geodetic datum, which will help to ensure that the exact location of the boundary is determined in relation to the coastal State. It is now possible, through the use of satellite position fixing methods to determine the geographical position of any chosen site on a single geodetic datum. There may be differences between the datums used, and so it is necessary to indicate the particular datum used in quoting geographical positions on maritime limits. Many parts of the Caribbean have been charted on North American Datum. Maritime boundary delimitation requires accurate maps and charts. Some Caribbean islands are incorrectly positioned on some older small-scale British Admiralty charts. A hydrographical and technical report should address the relationship between the EEZ and the continental shelf (including the extended shelf beyond 200 nautical miles, if any), and instance any potential difficulties with the claims of neighbouring States.

Before entering into negotiation, every CARICOM Member State should ensure that it has at its disposal a carefully prepared negotiating brief that takes full account of the hydrographical and a technical report, which is essential for every negotiating team undertaking delimitation negotiations. The brief should examine in detail the legal, technical and economic considerations with respect to the maritime areas, which would form the subject of the negotiations. It should have regard to the relevant decisions of the ICJ and awards by arbitral tribunals. An examination of relevant State practice in maritime boundary delimitation is also desirable. The policy options open to the negotiators with respect to the method to be pursued to achieve an equitable solution should be dealt with in the brief. The natural resource potential of the area to be delimited should form an important aspect of the brief.

6.3 A CARICOM Negotiating Strategy

CARICOM Member States need to formulate, individually or collectively to the extent feasible, a negotiating strategy, which takes account of up-to-date techniques in maritime boundary negotiations. Notwithstanding that Maritime boundary delimitation is primarily a

bilateral issue under international law, the Member States of CARICOM can agree on a common approach to boundary delimitation among themselves involving the following elements:

- (a) re-affirming that UNCLOS provisions with respect to delimitation will be adhered to and applied in good faith;
- (b) engaging in timely and purposeful negotiations, with conclusion within a specified time frame, say, three years;
- (c) utilizing CARICOM dispute mechanism for dispute settlement; and
- (d) resorting to provisional agreements under Article 74(3) of UNCLOS, similar to the recent Barbados-Guyana Cooperation Treaty of 2003, that would facilitate the development of natural resources in disputed EEZs.

CARICOM States can also formulate a common position with respect to Third States, for example OECS Members have a common position regarding Venezuela to negotiate boundaries on a regional basis, and to restrict the entitlement of Aves Island to waters within a radius of twelve nautical miles of the island, and then base the delimitation on the median line/equidistance method from the Venezuelan mainland and off-shore islands near to the coast and the OECS Members concerned. If Venezuela, as is likely, resists the invitation to negotiate with the OECS on a regional basis, a common position on the weight to be accorded Aves Island might be the best way to proceed from the sub-region's point of view. Of course, an individual approach would open the way for Venezuela to offer specific incentives to each State to increase the weight accorded Aves Island.

The inter CARICOM-OECS boundary delimitation policy should be guided by considerations that would benefit the CARICOM region as a whole. In this regard, the agreement on a Grenada-Trinidad and Tobago bi-point in delimitation negotiations would facilitate Grenada to maximise its maritime zones in the tri-point area where the three, Grenada, Trinidad and Tobago and Venezuela, countries' waters meet. The area has been identified in several geological surveys as having considerable potential for oil-and gas-bearing structures.

Boundary negotiations usually entail a large political and economic content, and there is seldom any opportunity to re-open a boundary agreement once it is concluded. This means that boundary negotiators should be well acquainted with the negotiating techniques likely to achieve an equitable solution in a particular case. The need to make area-based compensation trade-offs often arises in maritime boundary negotiations, but this should be done only after careful consideration and preferably in respect of areas about which much is known. Negotiators would not wish to lightly trade-off a potential oil field or a rich fishing bank for an area with few natural resources.

The appointment of a multidisciplinary negotiating team, preferably consisting of representatives from the Foreign Ministry, Ministry of Energy or Mines (if any), Fisheries Department, Survey Department and the Attorney General's Department, should be one of the first steps in a series of steps to be taken when maritime boundary delimitation

negotiation is contemplated. The negotiating team should have a leader with the full authority for the preparation and conduct of the negotiations. Every effort should be made to develop a pool of expertise in maritime boundary negotiations, particularly where negotiations with third States are involved. Where national or regional expertise is not available, the services of competent advisers in the appropriate legal, hydrographical or technical field should be secured to assist the conduct of the negotiation.

7 Findings and Policy Recommendations

7.1 Main Findings, The CARICOM Common Fisheries Regime

CARICOM's common fisheries policy has to be based on the international marine and fisheries conventions since UNCLOS, including the strategy outlined in the Barbados Program of Action for SIDS. They are supportive of CARICOM's policy objective of sustainable fisheries development of the Caribbean Sea. The two most important aspects of a common policy pertain to: 1) agreement on access to the resources of the CARICOM Fisheries Zone by Member States; and 2) resource access of Third Parties (distant water fishing states) that have a historic presence in the region. The access to resources within the CARICOM Fisheries Zone is governed by a UNCLOS proviso that stocks surplus to the coastal state capacity should be shared with other states. In a CARICOM regional context, the policy for access is that Member States have preferred access, not open access, over Third States, to any surplus stocks in the region. However, the resource situation indicates that there are few surplus stocks in the region.

The CARICOM Fisheries Zone that can be established on the basis of declared EEZs of Member States will not be a contiguous zone. It will consist of two relatively large sub-regions, which cover the Bahamas to Jamaica in the north and Suriname to St. Lucia in the south, that are interspersed with three small sub-areas: Dominica; the Leeward Islands of Montserrat, St. Kitts Nevis, and Antigua and Barbuda; and Belize. This non-contiguous nature of the zone indicates that extensive cooperation will be required with non-CARICOM States, particularly those sharing shelf or marine resources. Fortunately, CARICOM has made provision for cooperation and participation of the non-member States in the CRFM, the majority of which are co-members with CARICOM states in the Association of Caribbean States (ACS).

The goals of CARICOM's policy of sustainable fisheries development are: 1) to protect the resource capability to sustain itself biologically, and 2) to provide good socio-economic returns to those engaged in harvesting the resource. These goals are unattainable without effective management. From a regional fisheries point of view, the requirements for sustainable fisheries management are: a) to establish a policy and strategy for regional management that conforms to international agreements on fisheries exploitation; b) to put in place an effective administrative and regulatory structure or organisation, including provisions for research, conservation and surveillance; and c) to implement management measures. It is

in the context of the responsibilities and measures of a regional fisheries management organisation (RFMO) that the performance of the CRFM was examined.

International conventions from UNCLOS onwards have championed the establishment of regional organisations for fisheries management and have indicated that once an organisation is formed by a number of consenting States in a region, other states, i.e., non-members, should nevertheless comply with the regulations. It is also pointed out that the regional organisation should open its membership to these other States and to others (distant water states) that participate in the region. It is in this context that CARICOM could utilise the newly established CRFM as a RFMO that can serve the whole Caribbean Sea. The Agreement Establishing the CRFM indicates that its major role is to function as an RFMO with a secondary role of providing technical and advisory services to national fisheries units in their artisanal fisheries. However, the, CFRM has fallen into a trap whereby its secondary role, that of providing technical and advisory services to national fisheries units, has become its primary role. As a result, it purports to deal with virtually all aspects of fisheries, including serving fishermen's organisations, and fostering aquaculture, as well as other aspects that are more relevant to national fisheries units' responsibilities. Given its personnel and financial constraints, this widespread role threatens its effectiveness generally and thwarts the CRFM from devoting greater attention to management. It is also essential that in order to avoid conflict, the respective roles of a regional organisation and national fisheries units be clearly prescribed and adhered to.

In order to function as a RFMO, the CRFM requires little or no change in its articles in the Agreement Establishing the CRFM. However, to perform the duties of managing a Common Fisheries Regime, the CRFM has to be institutionally strengthened. The organisational changes required in the CRFM involve adding a management section to the existing structure under an assistant director responsible for Fisheries Management and Development. The main elements in this section pertain to regulations and licensing, surveillance and enforcement, and development and planning. The addition of these elements to the existing organisation and the operation of the vessel monitoring system (VMS) proposed would add US\$ 360,000 a year to current contributions of CARICOM Member States to the CRFM. However, these costs can be met and surplus revenues generated if license and access fees are charged and membership in the CRFM is extended to non-CARICOM States.

It is important that CARICOM States should be members of ICCAT because of its management responsibility for the tuna and billfish resources and the possibility of trade restrictions that can be imposed by ICCAT on countries that do not adhere to its regulations. Since ICCAT permits regional representation, it is desirable that the CRFM should provide for this representation. This does not preclude active participation from Member States in CRFM representation.

7.1.2 Findings, Boundary Delimitation

Boundary delimitation is a particular challenge in the Caribbean Sea, which is fully enclosed by the EEZs of all the Caribbean States. The problems of boundary limitation are due to the

following characteristics: 1) The island States are close to each other; 2) Many of these States share common shelves and banks; 3) There is the presence of archipelagic States; and 4) The most abundant fisheries resources are regional in nature--the migratory pelagics, tuna and billfish. It's been more than twenty years since UNCLOS came into effect, and CARICOM States have made little progress with formal delimitation.

Maritime boundary delimitation is proceeding slowly in CARICOM, with less than one quarter of the potential boundaries settled, and delimitation problems are appearing in the Region. Some states in the Region pay a high price in terms of economic growth benefits foregone, such as arrested oil and gas development, for the slow pace of formal delimitation. The potential maritime boundaries claims yet to be settled can be conveniently grouped in five categories, namely, CARICOM Member States and metropolitan powers; CARICOM Member States and other Caribbean States; intra-CARICOM (other than OECS Members); CARICOM (other than OECS) and OECS; and intra-OECS Members. It is of interest to note that the majority of maritime boundaries delimited thus far by CARICOM countries fall within the first and second categories and that no delimitation agreement has been concluded between an OECS and a non-OECS CARICOM Member State or between two OECS Member States.

Urgent practical steps need to be taken to ensure that maritime boundaries be settled amicably without acrimony and in a cost-effective manner. Although maritime boundary delimitation is in essence a bilateral matter between the coastal States involved, the preparation for negotiations can be done to a large extent on a multilateral level in appropriate cases such as in the Aves dispute with Venezuela. An appropriate strategy, which takes into account exploitation of the natural resources, living and non-living (oil and gas) and which involves the CARICOM and OECS Secretariats, should be devised to assist Member States to undertake boundary negotiations. The strategy should be guided by considerations that would benefit the CARICOM region as a whole.

7.2 Recommendations, CARICOM Common Fisheries Regime

At the Fifteenth Inter-Sessional Meeting, the CARICOM Heads agreed that "in order to effectively protect the Caribbean Sea and promote the sustainable use of its fisheries resources, Member States will ensure the successful functioning of the recently established Caribbean Regional Mechanism and will in due course consider investing it with the authority to administer a comprehensive Common Fisheries Regime." The main findings of this study with respect to these issues are: 1) A common Fisheries regime constitutes a realistic objective for CARICOM that can lead to its extension over the entire Caribbean Sea; and 2) The CRFM has the mandate to become the RFMO for the Region. It is within the spirit of the Heads agreement and these findings that the following policy recommendations are made:

CARICOM should articulate a Common Fisheries Policy in consultation with its Member States and stakeholders and develop an implementation plan covering a two-year time frame.

CARICOM should indicate its strategy for fisheries development in its CFZ, including its management plan for the Zone, conditions of access to the fisheries resources for Member or Participating States and for Third Party States (distant water fishing States).

CARICOM should establish a Common Fisheries Zone (CFZ) based on the declared EEZ limits of its Member States and should endeavour to make this a contiguous zone by agreements with non-CARICOM States as Participating Members of this Zone.

CARICOM should utilise the newly established CRFM as the regional fisheries management organisation for the CFZ and should institutionally strengthen it to be an effective management body. The CRFM should review its current priorities as stated in its Strategic Plan with the objective of reducing its priorities and bringing them more in line with a focus on management.

CARICOM should ensure that its Members would cooperate in providing the necessary services for surveillance and enforcement, inspection and other services that the CRFM would require for effective management, including appropriate legislation for these services.

CARICOM should be regionally represented at ICCAT with the CRFM as the representative organisation and that Member States should be responsible for the cost of regional membership.

CARICOM should establish a program for the implementation of the Common Fisheries Regime, based on the above recommendations and a two-year time frame. This would involve: consultations with Member States and subsequently with strategic non-Member States; the convening of a legal workshop for the development of appropriate protocols and for recommending any changes or amendments that might be required in the Agreement Establishing the Caribbean Regional Fisheries Mechanism; and securing the international (UN) approval of the CRFM as the RFMO for the Region.

7.3 Recommendations, Boundary Delimitation

CARICOM Member States should pay greater attention to defining the limits of their national jurisdiction. Collectively, the Common Fisheries Regime may require them to define the extent of their maritime jurisdiction.

The CARICOM and the OECS Secretariats respectively should develop guidelines that would enable them to assist their Member States to prepare for boundary negotiations without appearing to be favouring any particular Member. They should have the ability to assist Member States when they are negotiating with third States.

The CARICOM Secretariat should consider establishing a small technical unit to assist Member States with preparation for maritime boundary negotiation. The unit's tasks would include human resource development with respect to maritime boundary delimitation preparation in general and particularly with the development of negotiating teams of Member States (including OECS).

There should be greater transparency within CARICOM with respect to maritime boundary preparation for and negotiation of agreements between Member States or between a Member State and Third States.

Where it is feasible, an accompanying fisheries access arrangement (in the absence of a Common Fisheries Regime being in place) should be agreed to at the time of conclusion of a boundary agreement between two or more Member States.

Within the context of the UNCLOS, particularly with respect to the semi-enclosed status of the Caribbean Sea, CARICOM States should formulate a common strategy that includes matters relating to maritime boundary delimitation, to the extent that they are consistent with international law and practice.

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ANNEX 1

THE CARIBBEAN REGIONAL FISHERIES MECHANISM THE VOTING POWERS OF ASSOCIATE MEMBERS AND THE IMPLICATIONS THEREOF.

1. The Caribbean Regional Fisheries Mechanism (CRFM) has two categories of membership, namely, Member States and Associate Members of CARICOM and non-CARICOM States or territories of the Caribbean region. A State or territory in the former category has entitlement to become a Member of the CRFM upon signing or acceding to the Agreement, which established that body, while a State or territory in the latter category may be admitted as an Associate Member of the CRFM by the Ministerial Council, if in its opinion such State or territory is able and willing to discharge its obligation under the CRFM Agreement (Art. 3).
2. The organs of the CRFM are the Ministerial Council, the Caribbean Fisheries Forum and the Technical Unit (Art.6).
3. The decision-making procedure is contained in Article 14 of the Agreement. Sub-clause 1 states that every Member of the CRFM has one vote, and every Associate Member has one vote in respect of matters for which it is eligible to vote.
4. Sub-clause 4 of Article 14 states that the Member States may vote in any organ or sub-committee of the CRFM. Associate Members are permitted to participate in discussions in the Forum and its sub-committees, but eligible to vote only where decisions are being taken on management regimes to which they are parties, or concerning fisheries, which they share with other Member States.
5. There is no mention of participation or voting in the Ministerial Council by Associate Members. However, as pointed out above, sub-clause 1 states that every Associate Member has one vote in respect of matters for which it is eligible to vote. Sub-clause 1 is not stated to be subject to sub-clause 4 of Article 14.
6. In light of the scheme of Article 14, it is possible to interpret these provisions as conferring on Associate Members of the CRFM the right to participate and vote in decisions of management regimes or concerning fisheries, which they share with Member States. It is equally possible, though a bit difficult to appreciate, that the framers of the agreement intended that Associate Members of the CRFM should not participate in discussions or vote in decisions of the Ministerial Council, as is implicit in sub-clause 4 of Article 14, and in the light of the fact that sub-clause 3 does not mention Associate Members in connection with the quorum of the Council.

7. In order to remove any doubt as to the procedure, the CRFM Agreement should be amended in sub-clauses 1 and 4 of Article 14 to clarify the legal position.
8. From the point of view of the geopolitical and legal position of the Caribbean Sea and the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS), namely Articles, 63 (*Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it*), 64 (*Highly migratory species*) and 123 (*Co-operation of States bordering enclosed or semi-enclosed seas*), the CRFM would be unable to meet the expectation and meaningful legal status of Associate Members, if they could not attend and vote at meetings of the Council of Ministers in appropriate cases.
9. So long as doubts remain as to whether or not Associate Members of the CRFM have a right to participate and vote in the decisions of the Council of Ministers in proper cases, the ability of the CRFM to perform the role of a regional fisheries management organisation would be impaired.

Proposed amendments to the CRFM Agreement

Proposed amendments to the CRFM Agreement to clarify the voting rights of Associate Members and enhance the legal ability of the CRFM as a regional fisheries management organisation:

1. Article 7- *Ministerial Council*, re-number sub-clause 1 as 1(a), and add a new sub-clause (b) as follows-‘Each Associate Member of the Mechanism, where decisions are being taken on management regimes to which they are parties or concerning fisheries which they share with other Member States, shall nominate a Minister of Fisheries to represent it on the Ministerial Council and such representative shall have one vote’.
2. Article 14 *Decision-Making*, in sub-clause 1 the second sentence is amended to read as follows: ‘Every Associate Member shall have one vote in its deliberative organs, where decisions are being taken on management regimes to which they are parties or concerning fisheries which they share with other Member States’.
3. Article 14 sub-clause 4, delete the second sentence and replace it with the following: ‘Associate Members may vote in any organ or sub-committee of the Mechanism, where decisions are being taken on management regimes to which they are parties or concerning fisheries which they share with other Member States’.

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08/05/04