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CRFM Management Report – PY 2009 / 10

**REPORT AND PROCEEDINGS
OF THE
CARIBBEAN REGIONAL FISHERIES MECHANISM
MULTIDISCIPLINARY WORKING GROUP MEETING
ON THE
COMMON FISHERIES POLICY
31 MARCH – 1 APRIL 2009**

CRFM Secretariat, Belize
2009

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- V DRAFT AGREEMENT ESTABLISHING THE COMMON FISHERIES POLICY AND REGIME

INTRODUCTION

The Meeting of the Caribbean Regional Fisheries Mechanism Multi-Disciplinary Working Group was convened on 31 March to 1 April 2009 at the CARICOM Secretariat Annex, Turkeyen, Guyana.

OPENING

Mr. Milton Haughton, Deputy Executive Director, CRFM Secretariat, recalled the mandate of CARICOM Heads of Government, emanating from their Fourteenth Inter-Sessional Meeting held in 2003, to develop a Common Fisheries Policy and Regime (CFP&R).

He noted the various processes that had taken place over the years to bring this to fruition and highlighted that, in an effort to overcome some of the obstacles to progress, it was purported that focus should be placed on completion of the Policy first which would, by extension, facilitate the implementation of the Regime, ultimately.

REPRESENTATION

The List of Delegates in attendance at the Meeting is at **Annex I to this Draft Report**.

ADOPTION OF AGENDA

The Agenda as adopted by the Meeting is at **Annex II to this Draft Report**.

Jamaica moved the motion to adopt the Agenda and this was seconded by Belize.

PROCEDURAL MATTERS

The Meeting fixed its hours of work and determined the manner in which it would conduct its business.

2. OBJECTIVES

The Chair advised the delegates to refer to the discussions held at the First Ministerial Council Meeting of the CRFM in January 2009, as a guide to setting the objectives for this Meeting.

Particular reference was made to the reservations posited by the **Barbados, Suriname and Trinidad and Tobago representatives** to aspects of the CFP&R.

3. OVERVIEW ON DEVELOPMENT OF THE COMMON FISHERIES POLICY AND REGIME

Mr. Milton Haughton, Deputy Executive Director, CRFM Secretariat, gave an overview of the progress made in the development of the Common Fisheries Policy and Regime (CFP&R).

The **CRFM representative** explained that maritime states were in a strategic position as they possessed significant maritime resources which could assist in attaining food and nutrition security, boosting exports and foreign exchange earnings and sustaining economic opportunities and social well-being of rural communities and the poor.

He suggested that rapid progression of the world towards seafood consumption and recognition of the economic benefits of the Fisheries Sector to development has significantly served to underscore the critical importance of seafood.

The over-exploitation of fish reserves and optimisation of fish production to meet the growing demand has emphasised the need for closer cooperation among States in the conservation, management and sustainable utilisation of fisheries resources and related ecosystems in the Caribbean. It was in this context that the mandate by the Meeting of the Conference of Heads of Government, in 2003, was issued and a Draft Agreement for the Establishment of a CFP&R for CARICOM evolved.

The Meeting was reminded that the mandate of CARICOM Heads was in accordance with the scope of the Revised Treaty of Chaguaramas since its objectives was the conservation, management, development and sustainable utilisation of fisheries.

Further reference was made to the decision taken at the First Meeting of the Ministerial Council in January 2009, that a CRFM Multidisciplinary Group should meet to address Member States' difficulties with the Regime by, firstly, seeking agreement on a revised common policy and then elaborating the Regime.

The **CRFM representative** suggested that the provisions of the Common Fisheries Policy that created much contention among Participating States were Articles 5 – Establishment of a Common Fishing Zone, 6 – Access to a Common Fishing Zone, and 7 – The Implementing Agency and Management of the Zone.

The presentation by the **CRFM representative** is at **Annex III to this Draft Report**.

In the ensuing discussion the following matters were raised -

- (i) Clarification was sought on the relationship between the CRFM Ministerial Council and the COTED in terms of authority and communication structure. It was clarified that the Ministerial Council did, in fact, have the authority to make decisions but because it was not an official Organ of the Community, its decisions had to be endorsed by the COTED;

- (ii) It was suggested that for future reference, Member States should provide their comments from the beginning of the process so as to clearly define the process of implementing policy;
- (iii) The **Belize representative** maintained that there was a need to separate total Jurisdictional Seas from Exclusive Economic Zones to ensure there was clarity of purpose;
- (iv) It was noted that there was a need to consider the implications of the Economic Partnership Agreement (EPA) on the Common Fisheries Policy;
- (v) In an effort to achieve a clear understanding of the difference between the Policy and the Regime it was suggested that the Policy sought to address constraints while the Regime sought to implement the policy.

4. PRESENTATION OF REVISED DRAFT AGREEMENT ON THE COMMON FISHERIES POLICY

Dr. Winston Anderson, Consultant, briefly outlined the process towards the separation of the Common Fisheries Policy and the Regime.

In his presentation he recognised that any difference between the Common Fisheries Policy (CFP) and the Regime was negligible from the perspective of international law and advised that consideration be given to looking at the entire text in terms of Policy and Law, which would be less ambiguous. The Policy could then be defined as a framework for action and the Law as providing the procedures for implementation and regulation of the framework.

He noted that the instruments which defined the Regime included the Revised Treaty of Chaguaramas, the Legal Opinion from the Office of the General Counsel at the CARICOM Secretariat, the mandate of CARICOM Heads at their Inter-Sessional

Meeting, in 2003, the European Union Common Fisheries Policy and Fisheries Law, and several international conventions and treaties.

In suggesting a way forward to complete the Regime, he reaffirmed the mandate of the Ministerial Council, that focus be placed on the sections of the Draft Agreement for which there was agreement among Participating States. Additionally, the Consultant emphasised that amendments would be both substantive and editorial, including striking out inappropriate references to the concept of the Common Fisheries Regime.

Furthermore, a detailed analysis was done on the twelve (12) substantive sections of the Draft Agreement and suggestions were made accordingly.

The presentation by the Consultant, including suggested changes, is at **Annex IV to this Draft Report**.

5. DISCUSSION OF SUBMISSIONS AND INCORPORATION OF CHANGES

Subsequent to the presentation under **Agenda Item 4 – Presentation of the Revised Draft Agreement on the Common Fisheries Policy**, the Draft Agreement Establishing the Common Fisheries Policy and Regime (CFP&R) was discussed with a view to refining it to meet the needs of Participating States.

The revised Draft Agreement is at **Annex V to this Draft Report**.

During the discussion which led to the refining of the document the following points were highlighted –

General

- (i) With reference to **Article 6.1 (b)** “**Participating States shall determine the status of their stock...**” it was emphasized that a precautionary principle be incorporated;
- (ii) A recommendation was made to advise representatives at the next Ministerial Council Meeting that the CRFM would be the most appropriate body to manage and implement the Policy and Regime since the CRFM was led by Ministers;
- (iii) Reference was made to the format and wording used in **Article 239 of the Revised Treaty of Chaguaramas**, for the elaboration of protocols to address further undertakings not yet included in the body of the Revised Treaty and, in this regard, it was suggested that a similar format and wording be applied to the Draft Policy, with respect to controversial areas such as the “Common Fisheries Zone”.

3.0 Principles

- (i) In relation to **Article 3.2, General Undertaking on Implementation**, it was suggested that due to the nature of the Agreement it be constructed as a policy document that could be used as a reference and guide rather than as a legally-binding document to all Participating States.
- (ii) In relation to **Article 3.1 (i)** the **Trinidad and Tobago representative**, objected to the reference to “national access” in the document.
- (iii) In terms of applying the term ‘subsidiarity’ it was emphasised that this must be reflected or documented in this section, to emphasise that whatever could have been done at the national level was done and only where this was not possible it would be left to the regional body to complete.

- (iv) The list of principles were deemed to be too lengthy and specific and it was, therefore, advised that **Article 3.1 (a) – (f)** be accepted as the main guiding Principles with the others being subsumed under those six (6) guidelines.

5.0 The Common Fisheries Zone

- (i) It was acknowledged that the Policy was drafted with reference to the management of the Common Zone in mind since most of the resources and advisory support for the Policy would have, largely, been based on provisions in the United Nations Convention on the Law of the Sea (UNCLOS), pertaining to under- and un-exploited stocks of fish and management of fisheries in the Exclusive Economic Zone.
- (ii) It was suggested that the authority of the CRFM would become a matter for debate since it was confirmed that the understanding was that **Article 5.0** was crafted in relation to total jurisdictional waters.
- (iii) Due to its controversial nature, it was recommended that the only reference to the “Common Fisheries Zone” be under a provision in the text dealing with future undertakings.

6.0 Access to Fisheries Resources

- (i) Access was considered to be organically-bound to the Implementing Agency such that it had to be included in the text though it was recommended that such a provision be narrowly defined and a reference note included to redirect the definition to the Regime document.
- (ii) The Trinidad and Tobago representative expressed strong disapproval in relation to all references to Access in the Draft Agreement.

7.0 Implementation

- (i) It was emphasised that the role of the Implementing Agency had to be redefined to make it more advisory and supportive rather than infused with executive powers.
- (ii) It was agreed that all provisions referring to the Implementing Agency would be restructured to ensure that the term '*Implementing Agency*' is replaced by the '*CRFM*' such as in the following example for **Article 7.0**.

7.2 “Powers of the Caribbean Regional Fisheries Mechanism”

- (i) Caution was expressed with regard to discarding, wholesale, the Implementing Agency since it appeared to be organic to the text.
- (ii) It was suggested that consideration, though unappealing, be given to requesting that Suriname opt out of the Draft Agreement.
- (iii) It was recommended that the management role be distinct from the implementation role as implementation was dependent on respective governments.
- (iv) It was agreed that the Policy would apply to Member States wherever applicable rather than, simply, applied completely across the board
- (v) With reference to **Article 7.3** it was highlighted that Suriname had made a formal request for clarification on whether countries which were not Member States of CARICOM, particularly Associate Members, were to be included in CRFM and it was decided that this would be determined by the next Ministerial Council Meeting.

8.0 Conservation and Management of Fisheries Resources

- (i) The Trinidad and Tobago representative suggested that the Policy should address issues related to the WTO Negotiation on Fisheries Subsidies.

In this regard, an additional principle was included as **8.2 (iv)** to address reduction of subsidies that contribute to unsustainable fishing that encouraged sustainable fisheries development/management, such as by-catch reduction, turtle excluder devices on trawl nets.

In an effort to not offend Participating States which had difficulties with WTO provisions, it was suggested that the recommended inclusion incorporate the term “incentives” instead of “subsidies”.

9.0 Data Collection and Research

- (i) It was advised that issues specific to agriculture should be included under data collection and research.
- (ii) If the Region was to rise to the challenge of effort per unit of time, it was suggested that what needed to be done, essentially, was to facilitate research on species suitability for aquaculture, adaptive husbandry systems and production processes to enhance productions and yields as well as compile databases on production, yields, species in relation to the cultural and social and economic aspects of aquaculture.

10.0 Intellectual Property

- (i) In terms of Intellectual Property Rights, it was agreed that the CRFM would negotiate subject to and in accordance with any relevant contractual obligation owned by the CRFM.

- (ii) In relation to **Article 10.1 (b)**, the **CRFM representative** suggested that the obligation to grant licenses not be placed with the CRFM but, rather, that the CRFM grant licenses based upon requests and deliberation as to whether the material was to be used for non-commercial purposes.

15.0 Dispute Settlement

- (i) It was considered that the Caribbean Court of Justice (CCJ) should be the legal authority to assume jurisdiction on dispute settlement in accordance with Articles 188-192 of the Revised Treaty covering 'Modes of Dispute Settlement', 'Expeditious Settlement of Disputes', 'Notification of Existence and Settlement of Disputes', 'Good Offices', and 'Mediation', respectively. However, it was advised that the CCJ was responsible only for matters of interpretation of the Revised Treaty.
- (ii) In relation to **Article 15.1 (a)**, it was agreed that the timeline for the adjudicator's decision to be completed was insufficient and ought to be extended.

17.0 Inspection, Enforcement and Sanctions

- (i) In relation to **Article 17.1 on Inspection and Sanctions**, it was noted that there was need for the wording to reflect the recognition of development in international law in respect of port states' responsibility.
- (ii) It was recognised that **Article 17.2 (5) covering Follow-up of Infringements - Sanctions** should be applied to the Agreement, in general, rather than as a provision specific to any one section.
- (iii) The **Trinidad and Tobago representative** expressed reservations in relation to **State Liability** as covered under **Article 17.3** given her view that "damages" referred to in the section was too onerous.

6. **REVIEW OF DAY 1 ACCOMPLISHMENT**
and
7. **FURTHER REFINEMENT OF REVISED DRAFT AGREEMENT ON THE CFP**

Discussions pertaining to these two Agenda Items were subsumed under Agenda Item 5.

8. **THE WAY FORWARD**

It was agreed that following the Meeting, the Revised Draft Common Fisheries Policy (CFP) would be further revised in the following order:

- (i) The delegates to the Multidisciplinary Working Group would make additional amendments and submit same to the Consultant by **3 April 2009** in order to facilitate the finalisation of the revisions and refinement of the text.
- (ii) The Revised Draft CFP would be presented and discussed at a Special Meeting of the CRFM Forum on **20 April 2009** in Dominica, and further refined by the Consultant taking into account any recommendations or concerns arising from the Special Meeting;
- (iii) The output from the Special Meeting will be circulated to the Ministers with responsibility for Fisheries by **24 April 2009**;
- (iv) A Special Meeting of the CRFM Ministerial Council will be convened on **8 May 2009 in Barbados** to consider the Revised Draft CFP Agreement;
- (v) The document, with the recommendations of the Ministerial Council incorporated, will then be submitted to the COTED for consideration;

- (vi) After consideration by the COTED it was expected that the document would be tabled at the next Meeting of the Conference of Heads of Government for adoption.

9. ANY OTHER BUSINESS

There being no other business the Meeting ended with the usual exchange of courtesies.



Caribbean Community (CARICOM) Secretariat
11 May 2009

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Ms. Sandra Bart	-	Legal Officer Legal and Institutional Framework
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Ms. Lucy Wilburg	-	Senior Stenographer Conference Services
Mr. Nigel Duncan	-	Stenographer Conference Services



AGENDA

- 1 INTRODUCTION AND PROCEDURAL MATTERS**
- 2 OBJECTIVES**
- 3 OVERVIEW ON DEVELOPMENT OF THE COMMON FISHERIES POLICY AND REGIME**
- 4 PRESENTATION OF REVISED DRAFT AGREEMENT ON THE COMMON FISHERIES POLICY.**
- 5 DISCUSSION OF SUBMISSIONS AND INCORPORATION OF CHANGES.**
- 6 REVIEW OF DAY 1 ACCOMPLISHMENT**
- 7 FURTHER REFINEMENT OF REVISED DRAFT AGREEMENT ON THE CFP.**
- 8 THE WAY FORWARD**
- 10 ANY OTHER BUSINESS**



The Common Fisheries Policy

Agenda Item 3

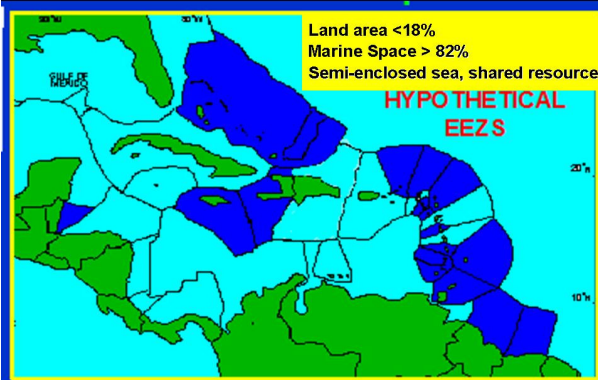
Milton Haughton
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FISHERIES -SITUATION

- **Today- vast array of problems:** The sector faces numerous challenges for sustainability, trade competitiveness and modernization.
- Some coastal resources are over exploited, BUT others are under-exploited or unexploited and therefore not making optimum contribution to our economic development.
- **IUU, global warming and sea level rise, marine pollution, overfishing & population growth, growing demand for fish are forcing us to think about the resources of the seas and oceans much more seriously**

CRFM MEMBERS



STRATEGICALLY IMPORTANT SECTOR

1. Production 195,000 MT - important for food security.
2. Employment: 142,000
3. Exports: US \$150 – 200 million per year
4. Entry into fisheries is growing.
5. Value approximately US\$500-600 million per year
6. Up to 8% of GDP in some countries.
7. Opportunities socio-economically disadvantaged
8. Major source of protein/minerals especially in rural communities, which have higher rates of poverty
9. Compliments and enhances the Region's tourism

FISHERIES SITUATION

- **Countries are maritime states with significant marine resources**
- **Strategically very important:**
 - food and nutrition security
 - Employment, poverty alleviation
 - exports & foreign exchange earning
 - sustained economic opportunities and social well-being of especially rural communities, the poor

Our Challenge: sustainable & Profitable Fisheries

- utilize resources to obtain optimum sustainable social & economic benefits
- **unlock potential of fisheries & aquaculture - realize substantial increases in production**
- Improve supply of fish protein for our people
- Expand employment, income, exports
- Revitalize marginalized fishing communities
- **Protect and conserve fish stocks & ecosystems** from degradation due to irresponsible fishing, pollution etc

Common Fisheries Policy

1. Heads Mandate 2003 - prepare a Common Fisheries Policy and Regime
2. Revised Treaty identifies broad objectives for the fisheries sector
3. The Treaty does not provide - detailed principles, rules and arrangements for sustainable use and effective management of fisheries – especially rules regarding access to and exploitation of the resources

Summary of Process Developing

1. Heads of Government Mandate, 2003
2. Studies and reviews:
 - Carl Dundas, Carlyle Mitchell, David Brown, Ronald Gordon
 - Missions to EU, Mission to Canada, Socio-economic
3. Regional workshops/Meeting – 2003, 2004, 2005, 2006, 2007
4. National Consultations with stakeholders
5. Working Groups:
 - Legal : 7 Meetings
 - Socio-economic
6. CRFM Forum and Ministerial Council (COTED)
 - “Work in progress – still being negotiated”

Common Fisheries Policy

- Closer cooperation, integration and consistency in fisheries policy among countries for rational development and sustainable use
- Creating better future : New opportunities, improvement in income, employment, increased production, trade, diversification and sustainable use of aquatic resources
- At the heart of the policy is a greater commitment to conservation, protection and sustainable use of living resources
- Regionalize/bring home key international commitments to make them operational in our fisheries – e.g. code of conduct
- Ensure fisheries in properly integrated & mainstreamed in the new regional economic order

The Draft Agreement

- represents over 5 years of work
- contains 27 Articles.
- provides for the elaboration of Protocols
- Comprehensive:
 - Provides for economic, social, biological aspects & management of ecosystems.
 - extends to access to fishing opportunities within the Zone, the conservation, management, development and use of resources, welfare of fishers and where applicable, the production, processing, marketing and trading of fishery and aquaculture products.

Important Consideration

- CFP&R is based socio-economic & ecological grounds.
- need to achieve higher levels of efficiency in the production of fish. Optimum sustainable production of fish requires closer cooperation among States in planning, management, and the structured integration of production,
- Secondly ecological perspective, many species are shared.
- Straddling highly migratory species.
- A Common Policy and Regime will enable all States to collectively determine the availability of the various stocks in the zone and ensure equitable allocation of such stocks

CFP&R: Vision & Goal

- **Vision:**
Participating States cooperating and collaborating in the conservation, management and sustainable utilization of the fisheries resources and related ecosystems for the welfare and wellbeing of the people of the Caribbean
- **Goal:**
Establish a Common Fisheries Policy and Regime within the context of the Revised Treaty, for the conservation, management, sustainable utilization, and development of fisheries resources and related ecosystems, and the promotion of competitive trade for the present and future social and economic benefits to the people of the Participating States.

OBJECTIVES – p10

- a) improve income and employment opportunities, alleviate poverty and to provide food security and nutrition;
- b) transform into market oriented, internationally competitive and environmentally sustainable;
- c) increase production and diversification of primary fish production and value-added, processed fishery products;
- d) enhanced capacity of States to provide adequate supplies of fish
- e) improve welfare & livelihood of fishers & fishing communities;
- f) to provide harmonized measures and operating procedures for fisheries management, trade in fish and fishery products, fish quality assurance and the administration of the fishing industry;
- g) build institutional capabilities - research, data collection, formulate and implement policies etc;
- h) research to facilitate decision-making

Main Provisions

1. Article 8 – Conservation & management
2. Article 9 - Data collection and research
3. Article 10 - Intellectual Property rights
4. Article 11 - Dissemination of information/ public awareness
5. Article 12- Registration of vessels
6. Article 13 - Marketing and trade of fisheries resources
7. Article 14 – Links with other organisations
8. Article 15 - Dispute Settlement
9. Article 16 – Public awareness
10. Article 17 - Inspection enforcement and Sanctions

Fundamental Principles –p12

- Use of best available scientific information in decision-making
- Consideration of the welfare and special needs of traditional, subsistence, artisanal and small scale fishers,
- Use of the precautionary approach
- Promotion of an ecosystem-based approach to the management and conservation
- Use of best practices in the harvesting, handling and processing of fish and fishery products;
- Inclusion of stakeholders in all aspects of fisheries management, planning and development;
- Equitable allocation of access rights and other benefits to ensure fair treatment for all;
- Resolution of disputes in a peaceful and timely manner;
- Promotion of good governance of fisheries through transparency and accountability;

Common Fisheries Policy

Challenges/Issues:

1. The Common Fisheries Zone
2. Access to the Zone
3. Management of the Zone - Role of Implementing Agency
4. Treatment of Coastal Communities and Fisher Folk
5. Membership of the CFP&R
6. Separating the Policy from the Regime

Main provisions

- Article 5- establishment of common fishing zone
- Article 6 – Access to common fishing zone
- Article 7 – The Implementing Agency & management of the zone

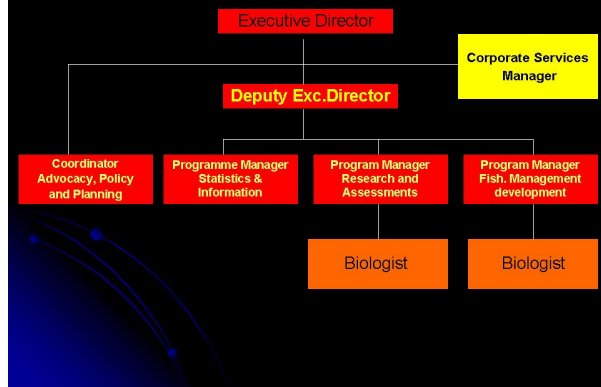
Art 5: Common Zone

1. The waters beyond territorial seas out to 200 miles
2. Waters within territorial zone reserved for national of the coastal state
3. **Issues:**
 - A zone where other member states would have access - necessary to give effect to the mandate and CSME?
 - Should access be deferred to future date to be determined by the Ministerial Council

Art 6: Access to Fishing Opportunities within Zone

1. Accessible to Participating States subject to certain pre-conditions:
 - ❑ Status of resource must 1st be determined
 - ❑ Access only where surplus or un-exploited species exist and is allowed exclusively for those species
 - ❑ No access to fully exploited resource or where a state has capacity to fully exploit the resource
 - ❑ Fisheries Management Plan prepared
2. Access & management of access regime to be determined by states collectively through the Implementing Agency

ORGANIZATIONAL STRUCTURE



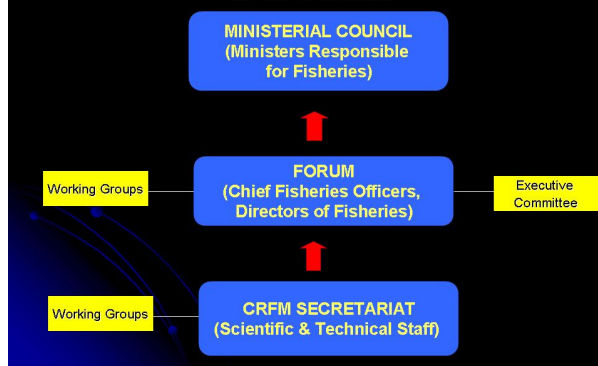
Art 7: Implementing Agency: CRFM

1. **The CRFM:** (1) Council of Ministers; (2) Forum of Fisheries; (3) Secretariat
2. **Decision making powers** - not just advisory
3. Responsibility:
 - ❑ developing measures to ensure sustainable use and proper management of resource
 - ❑ Allocating access rights to unexploited or surplus resources in the CFZ
 - ❑ e.g. flyingfish resource
4. Decision implemented at national level

Treatment of Coastal communities and Fisherfolk

- The welfare and protection of coastal communities and fisherfolk is specifically addressed
- Objectives, - "improve the welfare and livelihood of fishers and fishing communities."
- Fundamental Principles - "consideration of the welfare and special needs of traditional, subsistence, "artisanal and small-scale fishers in particular, access to traditional fishing "grounds."

CARIBBEAN REGIONAL FISHERIES MECHANISM



Membership of the CFP&R

- Question is whether the CFP&R should be open only to signatories to the Revised Treaty
- In the Draft Agreement membership is open to Signatories to 2002 CRFM Agreement.
- This means membership is open to Member States and Associate Member States of CARICOM
- The Associate Member States of CARICOM which are full members of the CRFM are currently Anguilla and the Turks and Caicos Islands

Separating the Policy from the Regime

- Focus on preparing a policy and after the policy has been agreed and signed then go on to elaborate the regime with details needed to implement the policy.
- In past 5 years elaborated a policy and regime setting out not only the principles and objectives but also a comprehensive framework to guide implementation (i.e. the regime).
- This approach was taken because most Member States wanted greater certainty regarding the nature and scope of the policy, their rights and responsibilities, and the main actions to be pursued to realize the objectives.
- At this time Member States have arrived at consensus on most of the provisions except Art 5-7



Conclusion

An instrument to give effect to the intentions of the CSME and UNCLOS in respect of fisheries to ensure the sector is integrated in the new regional economic order taking full account of their unique characteristics and the special approaches needed to ensure their sustainable use and conservation to provide optimum social and economic benefits to the people of the region.

Typical Caribbean Fishing Boats



History of Integration Process

Federation
1958-1962



CARIFTA
1968



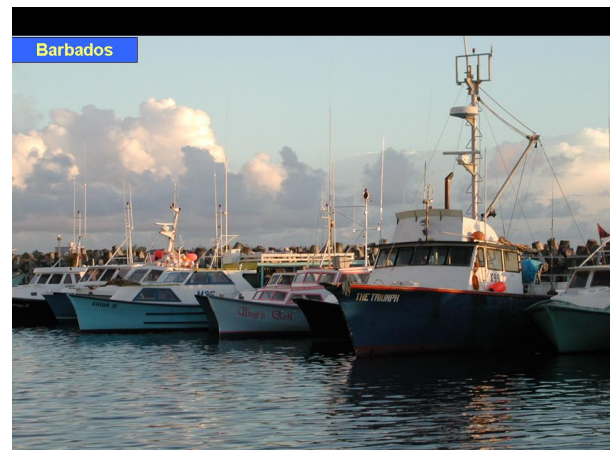
CARICOM
Common Market
1973



Single Market
and Economy
2006

Processing in Guyana





THE CARICOM SINGLE MARKET & ECONOMY(CSME)

- A development path through integration markets and economic activities
- i) Common external Tariff
- ii) a single internal area without barriers where the free movement of goods, people, capital and services, and freedom of establishment.
- 1. Rights assist the economic goals in establishing single unified market where factors of production can freely circulate
- 2. They improve opportunities and working conditions of the people of the region

Implications of Fundamental Freedoms

1. The core of the CSME – necessary for success – derogation or waiver or non-compliance could undermine
2. Rights assist the economic goals in establishing single unified market where factors of production can freely circulate
3. They improve opportunities and working conditions of the people of the region

The Agriculture Policy

- Chap 4 , Part 2, sets out Agri policy
- Fisheries is a sub-sector of agriculture
- Objectives – including fisheries
- Art 60 – Fisheries management and development

Can the Rights be Restricted?

Is fisheries excluded?

- Identification of existing restrictions
- Prohibition on introduction of new restrictions
- Program to remove all restriction
- Derogation from rights where there are difficulties or economic hardship
- Waiving of rights – re industry, sector or enterprise – time barred
- Answer – **NO!!** – general application

Natural Resources (Art 58)

The Community shall adopt measures

- *to assist in the management of natural resources in support of the transformation and sustainable development of the agricultural sector.*
- *Emphasis on EEZ and all other maritime areas under the national jurisdiction of the Member States;*

Possible Benefits

- Efficient self-employed fishers/companies should benefit from expanded fishing opportunities & economies of scale - realize increased profitability.
- Likewise, consumers should benefit from access to cheaper fish and fishery products, increased choice of products resulting from the more competitive environment.
- Increased competition within the single domestic market should lead to more efficient production and harvesting of fish, and innovations, including the creation of new value added product and improved sanitary systems, thus making regionally produced fish and seafood more competitive on the global market.

Fisheries (Art 60)

The Community shall

- *promote the development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis.*
- *promote the establishment of a regime for the **effective management**, conservation and utilization of the living resources of the EEZ of the Member States.*

Do We Need a Common Fisheries Policy?

1. For **long term development** we must rely on the resources available to us – hence, our marine resources, living and non-living.
2. For **food and nutrition security** – fish and seafood
3. Biological & ecological factors – highly migratory, straddling and **shared resources** – cannot be managed, and used sustainably unless countries cooperate and harmonise their actions
4. International & Regional obligations UNCLOS (Art 63, 64, 123 impose obligation to cooperate)

KEY PRINCIPLES

- Non-discrimination on basis of Nationality (Art 7)
- Most favoured Nation Treatment (Art 8)
- General undertaking on Implementation (Art 9) – issue of compliance

CSME & CFP&R

CARICOM Single market and economy (CSME)



Common Fisheries Policy & Regime (CFP&R)



Possible Disadvantages

- Less efficient fishers/enterprises - marginalized and forced out of fishing, processing, distribution trade
- Smallscale fishers are more likely to continue fishing despite a loss of profitability due to competition. This could put additional stress on the resource base leading to overfishing and degradation of ecosystem.
- Increased profitability could also attract new entrants to the fisheries leading to overcapacity, overfishing and loss of profitability.
- Such negative outcomes can be avoided by regulatory framework, and monitoring, control and surveillance systems to ensure proper balance between resource use and conservation



**Draft Agreement Establishing
the Common Fisheries Policy
and Regime**

Separation of Policy from Law

THIS IS A WORK IN PROGRESS

**Mandate of Heads of Government
2003**

- Development of Common Fisheries Regime (later, Policy and Regime)
- No time / date certain
- Europeans started in 1970; there are still issues outstanding (e.g. international representation)

“Policy” and “Regime”

- A distinction between “policy” and “regime”? (Oxford Dictionary, 3rd ed., 2006)
- “Policy”:
 - Plan of action adoption by an organization or person;
 - Approach, code, **system**, guidelines, theory.
- “Regime”:
 - “an ordered way of doing something; a system”
 - Arrangement, **scheme**, *policy*, method, course. plan.

Legal Requirements

- Revised Treaty of Chaguaramas
- Legal Opinion of OGC (29 September 2008):
 - Para. 17: member states were not in a position to decide on details of a fisheries regime at the time of drafting

Distinction bet Policy and Regime

- Is there an inherent distinction between “policy” and “regime”?
 - Framework for guiding action versus rules that regulate action (implements guidelines)
 - Binding nature of provisions?
 - Vienna Convention on the Law of Treaties, 1969 (VCLT). Article 2
 - EU Common Fisheries Policy & Fisheries Law

Legal Requirements

- International Law Obligations (e.g., UNCLOS, customary international law)
- Legal Opinion of OGC (29 September 2008):
 - Para. 22 “... there is no international obligation for common management of the EEZ... while such a regime may be highly desirable under UNCLOS, it is a decision within the realm of individual State sovereignty.”

Task of First Meeting of Inter-disciplinary Working Group

- Provisions of Draft Agreement on which Members agree... whether be "policy" or "regime".... To be called CFP
- **Versus**
- Provisions which may require further deliberations / negotiations. Identify and reserve for further work

Legal Requirements

- **Mandate of Heads, 14-15 February 2003**
 - "endorsed the proposals ... for elaborating a Common Fisheries Regime".
- **Mandate of Heads, 25-26 March 2004**
 - "Reaffirmed the continuation of the mandate to the CARICOM Secretariat to propose a framework for the exploitation and conservation of fisheries resources..."

Legal Requirements

- CSME Rights and CFP&R
- Legal Opinion of OGC (29 September 2008):
 - Para 32: the RTC "does not provide a specific mandate for the Common Fisheries Policy and Regime as envisaged in the document submitted to the COTED i.e. common management of fisheries, creation of a common fishing zone and granting management functions ... to an Agency."

Impact of Legal Requirement based on Heads Mandate

- Not dealt with in Legal Opinion of OGC
- No time-frame on development of 'regime'
- Further development based on:
 - ❖ Representations made by State representatives (e.g. reservations by Suriname, others)
 - ❖ Meetings of State Representatives (e.g. First Meeting of the Ministerial Council of the Caribbean Regional Fisheries Mechanism)

Legal Requirements

- Applicability to non-CARICOM Member States
- Legal Opinion of OGC (29 September 2008):
 - Para 33: If it is accepted that the CFR&P as proposed is not intrinsically grounded in the RTC and particularly the SCME provisions, then it should not be difficult to establish a regime that applies to non-CARICOM states

SUMMARY

- Conceptually, distinction between "policy" and "regime": not necessarily in int'l law...
- No legal obligation to immediately establish binding fisheries policy / regime
- Task of First Meeting of Inter-disciplinary Group (March 31-April 1, 2009)?

Task of First Meeting of Inter-disciplinary Working Group

- Provisions of Draft Agreement on which Members agree... whether be “policy” or “regime”.... To be called CFP
- **Versus**
- Provisions which may require further deliberations / negotiations. Identify and reserve for further work

2.0 Vision, Goals and Objectives

- Members basically agree to V.G.O.
- Note “editorial” striking of “regime” where it appears in text.

Preamble

- There are 12 substantive paragraphs
- Two kinds of changes may be required
 - “editorial” i.e., striking all (inappropriate) references to the concept of the common fisheries regime
 - ❖ Note e.g., reference in second paragraph is appropriate
 - some paragraphs that foreshadow substantive regime ... definition of zone, access issues etc.

3.0 Principles

- Significant agreement to principles
- Delete “regime” where-ever it appears (editorial)
- 3.1 Consider whether “application” or “implementation”
- (i) “Equitable allocation” (no agreement by member states)
- (l) “pooling”
- (r) “clear definition...”

Definitions

- Basic idea is to omit those terms NOT to be included in the Policy document e.g.,
- “access agreement” ref to IA
- “common fisheries zone” ref to concept
- “Fisheries resources” ref to CFZ
- “Implementing Agency” - Facilitating Agency or retain CRFM by name...
- “Rights based management” – what that?

3.2 General Undertaking

- Members to confirm nature of obligations of Agreement on Policy
- Reference to IA needs to be explicated
 - Consideration to be given to simply designating the CRFM as the “Agency” “Facilitating Agency”

4.0 Scope of Policies

- Should this be / mean “Application of Principles”?
- Members may wish to apply Principles on individual / national basis
- Members to agree on CFZ

5.0 The Common Fisheries Zone

- Members yet to agree
- If Agreement can be achieved then insert agreed text; if cannot then omit
- Alternative is to use square brackets

6.0 Access to Fisheries

- 6.1 (b) - no definition of “management plan”... should this be to national environmental / fisheries policies?

6.2 In the Common Fisheries Zone

- Review provisions under “in the common fisheries zone - - - *members are yet to agree on powers/rights/ responsibilities in the CFZ*”
- 6.2.1 - - - see above
- 6.2.2 --- access by third states continue to be regulated on a national basis?
- 7.1 & 7.2 --- powers and responsibilities of IA yet to be agreed - needs to be redrafted

7.0 Implementation

- Provisions on implementation – and especially the role and function of the Implementing Agency needs to be reconsidered
- An important issue is whether the CRFM should be recognized directly as the Agency and thus carry forward its established functions of giving advice, facilitating collaboration etc.

8.0 Conservation and Management

- Redefine role of IA as advisory and facilitating

9.0 Data Collection and Research

- There appears to be broad consensus on this issue, provided there is clarity with regard to the role and function of the IA (CRFM?)

14. Links with other organizations

- Basically there is agreement subject to clarification of role of CRFM

10. Intellectual Property Rights

- Broad agreement on IPR

15. Dispute Settlement

- Basic agreement, note:
 - Requirements for CCJ involvement
 - Requirement for list of arbitration

11.0 Dissemination of Information

- Broad agreement on dissemination of information

16.0 Public Awareness

- Define role of IA

12. Registration of Vessels

- Broad agreement on regime for registration of vessels

Adjudication

- Note requirement for decision in 21 days

13.0 Marketing and Trade of Fisheries Resources

- Broad agreement on marketing and trade of fisheries resources (note the definition of "fisheries resources")

15.2 Arbitral Tribunal

- Arbitral Tribunal
- Requirement for List

16.0 Public Awareness

- Define role of IA

Final Clauses

- Fairly standard
- Ordering could be reviewed

17.0 Inspection, Enforcement and Sanctions

- Role of national state versus regional agency

END

- Thank you!



Draft Agreement Establishing
The Caribbean Community Common
Fisheries Policy

Draft Agreement Establishing the Caribbean Community
Common Fisheries Policy

Preamble

The Participating States

Being guided by the Principles enunciated in the Revised Treaty of Chaguaramas which was signed by Heads of Government in Nassau, Bahamas, on 5 July 2001 and in the Agreement Establishing the Caribbean Regional Fisheries Mechanism which was signed in Belize on the fourth day of February 2002;

Conscious of the mandate given at the Fourteenth Inter-Sessional Meeting of the Conference of Heads of Government held in Trinidad and Tobago, 14 - 15 February 2003, to elaborate a Common Fisheries Regime;

Mindful of the relevant provisions of the 1982 United Nations Convention on the Law of the Sea; the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region; the 1990 Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean; the 1992 United Nations Convention on Biological Diversity; the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the 1994 Barbados Programme of Action for the Sustainable Development of Small Island Developing States; the 1995 Food and Agriculture Organisation Code of Conduct for Responsible Fisheries; the 1995 United Nations Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; the 2002 Johannesburg Declaration on Sustainable Development, the Plan of Implementation of the World Summit on Sustainable Development and the 2005 Mauritius Strategy for the Implementation of the Barbados Programme of Action;

Conscious also that some species of marine and other fisheries resources within the jurisdiction of Member States are underexploited or unexploited, and are therefore not making optimum contribution to the social and economic development of the Caribbean Community;

Aware that many commercial species are fully or overexploited and are in need of management, conservation and rehabilitation;

Aware also that certain living marine resources, which are of interest to the peoples of the Caribbean Region, are highly migratory, straddle national boundaries and are harvested by Third States;

Deeply conscious of the need to promote the sustainable use of living marine and other aquatic resources through the efficient development, management and conservation of such resources;

Mindful that the provisions of the Revised Treaty of Chaguaramas regarding the principles of non-discrimination and most favoured nation treatment, the right of establishment, the right to provide services, the right to move capital in the Community and the right of movement of Community nationals are applicable to such nationals who are involved in the fisheries and aquaculture sectors;

Noting that Article 60 of the Revised Treaty of Chaguaramas provides that the Community, in collaboration with competent national, regional and international agencies and organisations, shall promote the development, management and conservation of the fisheries resources in and among Member States on a sustainable basis;

Noting Also that Article 4 (a) of the Agreement Establishing the Caribbean Regional Fisheries Mechanism has among its objectives the efficient management and

sustainable development of marine and other aquatic resources within the jurisdictions of Member States;

Determined to ensure the long-term sustainable use and conservation of the living aquatic resources within the jurisdictions of Member States;

Recognizing the Caribbean Sea as a large marine ecosystem;

Recalling Resolution 59/230 of the United Nations General Assembly on promoting an integrated management approach to the Caribbean Sea area in the context of sustainable development;

Convinced that the concept of the Caribbean Sea as a special area in the context of sustainable development can, *inter alia*, be given effect through a Common Fisheries Policy;

Have agreed as follows:

1.0 Definitions

1.1 For the purpose of this Agreement Establishing the Caribbean Community Common Fisheries Policy the following definitions shall apply:

- (a) 'access agreement' means an agreement concluded between and among Participating States, **[or by Participating States through the CRFM]** with Third States to exploit the fisheries resources of a State or group of States.
- (b) 'aquaculture' means all activities in fresh, brackish or salt waters aimed at the husbandry or culturing of aquatic plants and animals in engineering

containment areas, and includes ranching and hatchery-reared re-stocking practices.

- (c) 'conservation' means the sustainable use that safeguards ecological processes and biological diversity for present and future generations;
- (d) 'ecosystem-based approach' means taking account of species interactions and the interdependence between species and their habitat when making decisions;
- (e) 'fish' means any aquatic plant or animal or parts and derivatives thereof, and includes eggs, larvae and all juvenile stages;
- (f) 'fisheries management and development plans' means specific arrangements aimed at controlling and regulating the exploitation of fisheries resources;
- (g) 'fisheries resources' includes all the fishable resources, natural and cultured, occurring within the national jurisdiction of Participating States or outside that jurisdiction but accessed by Participating States;
- (h) 'fishing' means catching, taking or harvesting fish or aquatic flora or attempting to catch, take or harvest fish or aquatic flora or any operation at sea, on a lake or river, in connection with, or in preparation for, catching, taking or harvesting fish or aquatic flora, including placing, searching for or retrieving any fish aggregating device and searching for fish or flora;
- (i) 'fishing effort' means the level of fishing, as may be defined, *inter alia*, by the number of fishing vessels, number of fishers, amount of fishing gear and technology that may enhance catchability and the time spent on fishing or searching for fish;
- (j) 'fishing vessel' means any vessel, boat, ship or other craft, which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and all its equipment;
- (k) "CRFM" means the body created by the Agreement Establishing the Caribbean Regional Fisheries Mechanism dated 4 February 2002

comprising the Ministerial Council consisting of Ministers responsible for fisheries which determines policy, the Forum which determines the technical and scientific work, and the Technical Unit which acts as the Secretariat;

- (l) 'limit reference points' means values of fish stock population parameters such as biomass or fishing mortality rate, which should be avoided because they are associated with unknown population dynamics, stock collapse or impaired recruitment;
- (m) 'Participating State' means a State that is a signatory to this Agreement;
- (n) 'precautionary approach to fisheries management' means, *inter alia*, that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment;
- (o) 'Revised Treaty' means the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy that was signed by Heads of Government in Nassau Bahamas on July 5, 2001;
- (p) 'safe biological limits' means indicators of the state of a stock or of its exploitation inside which there is a low risk of transgressing certain limit reference points;
- (q) 'Secretary-General' means the Secretary-General of the Caribbean Community as established by Article 2 of the Revised Treaty;
- (r) 'stock' means fisheries resources that occur in a given management area;
- (s) 'sustainable exploitation' means exploitation of fisheries resources that will not have undue negative impacts on aquatic ecosystems and is conducted in such a way that future exploitation will not be prejudiced;
- (t) 'Third States' means states which are not Parties to this Agreement.

- (u) 'Bare Boat Charter': A charter in which the bare ship is chartered without crew; the charterer, for a stipulated sum taking over the vessel for a stated period of time, with a minimum of restrictions; the charterer appoints the master and the crew and pays all running expenses.
- (v) 'Rights-based management' includes any system of allocating individual fishing rights to fishermen, fishing vessels, enterprises, cooperatives or fishing communities.

2.0 Vision, Goal and Objectives

2.1 Vision:

The Common Fisheries Policy is inspired by vision of Participating States cooperating and collaborating in the conservation, management and sustainable utilization of the fisheries resources and related ecosystems for the welfare and well-being of the people of the Caribbean.

2.2 Goal:

The Common Fisheries Policy is inspired by the goal of establishing, within the context of the Revised Treaty, appropriate measures for the conservation, management, sustainable utilization, and development of fisheries resources and related ecosystems, and of the promotion of competitive trade for the present and future social and economic benefits to the people of the Participating States.

2.3 Objectives:

The objectives of the Common Fisheries Policy are:-

- (a) To use fisheries resources to improve income and employment opportunities, alleviate poverty and to contribute to food and nutrition security in the Participating States;

- (b) To transform the fisheries sector towards being market oriented, internationally-competitive and environmentally-sustainable;
- (c) To increase the production and diversification of primary fish production and value-added, processed fishery products;
- (d) To enhance the capacity of Participating States to provide an adequate supply of fish and seafood for their consumers;
- (e) To improve the welfare and livelihood of fishers and fishing communities;
[by use of such measures as:
 - (i) access to fisheries insurance schemes**
 - (ii) education with regard to occupation health and safety**
 - (iii) social assistance programmes displaced due to fisheries management**
 - (iv) compensation schemes for fishers whose livelihoods are impacted by coastal management issues]**
- (f) To set out harmonized measures and operating procedures for fisheries management, trade in fish and fishery products, fish quality assurance and the administration of the fishing industry consistent with the Revised Treaty and other relevant international agreements;
- (g) To build the institutional capabilities of Participating States to, *inter alia*, conduct research, collect and analyse data, improve networking and collaboration among Participating States, formulate and implement policies, and make decisions;
- (h) To promote and conduct research to facilitate decision-making regarding the sustainable use, management and conservation of the fisheries resources, including aquaculture;
- (i) To facilitate the provision of technical assistance to Participating States, *inter alia*, the delimitation of maritime boundaries;
- (j) To safeguard the aquatic environment from pollutants and hazardous waste, in order to sustain fisheries production and protect fishing

communities from the impact of global warming, climate change, and natural disasters;

- (k) To promote the sustainable development of aquaculture, including mariculture in the Caribbean Region as a means of, *inter alia*, increasing trade and export earnings, **[food and nutrition security, and reducing fishing pressure on over-exploited fish stocks]** ;
- (l) To promote the establishment and maintenance of effective monitoring, control, and surveillance systems to protect the fisheries and ecosystems;
- (m) To promote establishment and maintenance of an effective sanitary and phytosanitary regime for the fishing industries of Participating States;
- (n) To promote integrated coastal and wider marine ecosystems management in an effort to enhance the conservation and management of species and habitat;

Principles

3.1 Fundamental Principles

The following fundamental principles shall guide the implementation of the Common Fisheries Policy:

- (a) Compliance with the Revised Treaty, the CRFM Agreement and other applicable regional and international legal instruments and agreements;
- (b) Use of the best available scientific information in fisheries management decision-making, taking into consideration traditional knowledge concerning the resources and their habitats as well as environmental, economic, and social factors;
- (c) Consideration of the welfare and special needs of traditional, subsistence, artisanal and small scale fishers, in particular their access to rights-based fisheries as well as access to traditional fishing grounds;
- (d) Use of the precautionary approach to conserve, manage and exploit the fisheries resources;

- (e) Promotion of an ecosystem- based approach to the management and conservation of fisheries resources including the protection of biodiversity, fragile ecosystems and critical fisheries' habitats in the marine environment and their rehabilitation where necessary;
- (f) Use of best practices in the harvesting, handling and processing of fish and fishery products in order to maintain their nutritional value, quality and safety, reduce waste and minimize any unfavourable impact on the environment;
- (g) Collaboration and co-operation with national, regional and international agencies on fisheries matters in the best interest of the Participating States;
- (h) Inclusion of stakeholders in all aspects of fisheries management, planning and development;
- (i) **[Equitable allocation of access rights and other benefits to ensure fair treatment for all;]**
- (j) Resolution of disputes in a peaceful and timely manner;
- (k) Promotion of good governance of fisheries through transparency and accountability;
- (l) Commitment to the collection, pooling, and sharing of data and information, and the dissemination thereof in a timely manner;
- (m) Trade in fish and fishery products according to agreed standards;
- (n) Management of fishing capacity and fishing methods to ensure resource sustainability and protection of the ecosystem;
- (o) Integration of fisheries into coastal area planning and management to ensure that the needs of coastal fishing communities are met;
- (p) Promotion and expansion of aquaculture production as a means of, inter alia, improving food and nutrition security, income and employment opportunities, and alleviating poverty;

- (q) Eradication of the use of destructive fishing gear and methods, and illegal, unreported and unregulated fishing;
- (r) Ensure clear definition of responsibilities for the implementation of fisheries policies at the national and regional levels.
- (s) **[Promote the application of the principle of subsidiarity.]**

3.2 General Undertaking on Implementation

Participating States shall take all appropriate measures, to secure the fulfilment of obligations arising under this Agreement or resulting from decisions taken by the Ministerial Council of the CRFM. Participating States shall abstain from any measures which could jeopardise the attainment of the objectives of this Agreement.

4.0 Scope of Policy

4.1 The Common Fisheries Policy shall extend to the development, management and conservation of fisheries and aquaculture within areas under the jurisdiction of Participating States and to such activities of nationals wherever they may occur, including the welfare of fishers, and the production, processing, marketing and trading of fishery and aquaculture products.

5.0 Access to Fisheries Resources

5.1 In the areas under the national jurisdiction of Participating States:

- (a) Participating States shall have authority in their respective areas under national jurisdiction to manage access to fisheries resources taking into account such conservation and management measures as may be

adopted from time to time by competent regional and international bodies;

- (b) Participating States shall determine the status of their stock or fisheries resources in areas under national jurisdiction and in the event of surplus, may allocate licences to such other Participating States or Third States, taking into account their obligations under the United Nations Law of the Sea Convention and any recommendations that may adopted by the Ministerial Council of CRFM.

6.0. Implementation

6.1 Role of the Caribbean Regional Fisheries Mechanism

The Caribbean Regional Fisheries Mechanism shall assist and facilitate in the discharge of obligations by Participating States of their obligations under this Agreement.

The CRFM shall seek, as far as possible, to give effect to the Objectives of this Agreement, as set out in Article 2.

In seeking to give effect to the Objectives, the CRFM shall be guided by the Principles set out in Article 3 of this Agreement, and also by the Community Agricultural Policy and the Fisheries Management and Development provisions as set out in relevant Articles of the Revised Treaty and the principles provided for in any other applicable international agreements.

6.2 Functions of the CRFM

The CRFM shall, without prejudice or limitation to any of its powers under the CRFM Agreement:

- (a) Assist Participating States in establishing and keeping under review measures governing access to waters and resources relating to the sustainable pursuit of fishing activities;
- (b) Assist Participating States in deciding on catch and fishing effort limits, the allocation of fishing opportunities among Participating States, as well as on the conditions associated with those limits;
- (c) Provide advice to Participating States in relation to the state of fisheries resources, including their abundance and the level of their exploitation, as well as the state of the fisheries based thereon and the state of the supporting ecosystems;
- (d) Assist Participating States in keeping under review the economic and social aspects of the fishing industry and decide on any measures aimed at its sustainable development;
- (e) Recommend the adoption of conservation, management and recovery plans as far as necessary to maintain stocks within safe biological limits and maintain biodiversity and ecosystem health;
- (f) Promote and establish appropriate cooperative mechanisms including the imposition and enforcement of sanctions for effective monitoring, control and surveillance;
- (g) Facilitate the establishment of mechanisms to reduce capacity to levels commensurate with the sustainable use of fisheries resources where excess fishing capacity exists;
- (h) Encourage, coordinate and facilitate the adoption of measures for the development of human resources in all aspects of fisheries to meet the objectives of the Common Fisheries Policy;
- (i) Encourage, recommend, coordinate and undertake data collection, research and development activities;
- (j) Assemble, publish or disseminate information regarding exploitable fisheries resources and ecosystems;

- (k) Promote and facilitate the establishment and maintenance of strategies and programmes for the responsible development and management of aquaculture and fisheries enhancement;
- (l) Establish and maintain a fishing fleet register containing the information that it receives from Participating States regarding the fishing vessels under their jurisdiction or flying their flag;
- (m) Promote and facilitate the adoption of appropriate measures to ensure the right of consumers to safe, wholesome and unadulterated fish and fishery products;
- (n) Encourage the establishment and maintenance by Participating States of effective safety and quality assurance systems to protect consumer health and prevent commercial fraud;
- (o) Facilitate the adoption of minimum standards for safety and quality assurance and encourage the effective application and monitoring of these standards by the Participating States;
- (p) Assist in the adoption of measures to promote and facilitate the production of value-added products by Participating States;
- (q) Assist in the creation of new fishing opportunities for Participating States through, *inter alia*, the negotiation of access agreements and the adoption of measures which facilitate and encourage vessels of Participating States to take advantage of high seas fishing opportunities;
- (r) Encourage, support and provide effective regional representation at relevant international fora;
- (s) Seek and mobilize technical and financial resources, in collaboration with multilateral and bilateral donor agencies, to promote and enhance the research, administrative and management capacities of Participating States and regional fisheries institutions;
- (t) Promote the adoption of measures to encourage compliance with the provisions of the Common Fisheries Policy;
- (u) Promote and facilitate the development of protocols to provide for the governance and operation of the Common Fisheries Policy;

- (v) Encourage, measures for the development of sport and recreational fisheries, and the ornamental fisheries sub-sector;
- (w) Promote the adoption of measures to prevent fisheries resources that are at risk from being extirpated or becoming extinct, including making provisions for the recovery of such species that are extirpated, endangered or threatened as a result of human activity; and promote the management of species of special concern to prevent them from becoming endangered or threatened. The CRFM shall seek to facilitate this by coordinating:
 - (i) the preparation and adoption of recovery strategies and the preparation and implementation of action plans, and
 - (ii) the activities of Participating States relating to the protection of species at risk;
- (x) Encourage the performance of such other acts as are necessary for the effective implementation of the Common Fisheries Policy.

6.3 The Membership of the CRFM shall, for the purposes of the Common Fisheries Policy, be the same as that provided for in Article 3 of the CRFM Agreement which was signed in Belize on the fourth day of February, 2002.

7.0 Conservation and Management of Fisheries Resources

7.1 The Participating States, facilitated by the CRFM, shall formulate, adopt and revise management and conservation measures on the basis of the best scientific evidence available.

7.2 The Participating States, facilitated by the CRFM, shall make decisions in developing harmonized fisheries conservation, management and development strategies. To this end, the CRFM shall assist Participating States to:

- (i) Adopt and apply appropriate harmonized fisheries management tools and approaches as follows:
 - (a) Develop and implement conservation, management, and recovery plans specific to the fishery which would include appropriate harmonized fisheries management strategies.
 - (b) Adopt fisheries conservation, management and recovery plans as far as necessary to maintain stocks within safe biological limits for the respective fisheries.
 - (c) Prepare development, management and conservation plans on the basis of the ecosystem-based approach and precautionary approach to fisheries management taking into account any limit reference points recommended by relevant scientific bodies.
 - (d) Adopt immediate preventative measures if there is evidence of a risk that fishing activities could seriously threaten the conservation of fisheries resources or degradation of the essential fish habitat;
 - (e) Notify the CRFM in a timely manner when action is taken to manage or rehabilitate their fisheries.
- (ii) Conduct monitoring, control and surveillance of all aspects of fisheries operations, including the establishment of vessel monitoring systems, and programs to secure the elimination, deterrence and prevention of illegal, unreported and unregulated fishing.
- (iii) Participating States shall, to the limit of their capabilities:
 - (a) monitor, control and undertake surveillance of their maritime space and, where possible, co-operate in monitoring, controlling and undertaking surveillance of contiguous space in order to eliminate, deter and prevent illegal, unreported and unregulated fishing;
 - (b) establish an appropriate vessel monitoring system to monitor the position and activity of vessels flying their flag or under their Registry;
 - (c) adopt port and "at sea" inspection schemes;

- (d) take inspection and enforcement measures necessary to ensure compliance with the rules of the Common Fisheries Policy; and
- (e) ensure that appropriate and effective measures are taken against violators of the rules established by the Common Fisheries Policy and the measures developed thereunder to manage, conserve, protect and ensure the orderly development and control of the fisheries of Participating States.
- (f) establish appropriate monitoring, research and education programmes, and management response plans and adaptation strategies to mitigate the impact of global warming, climate change and sea level rise and other environmental changes on the fisheries sector;
- (g) cooperate with relevant Regional Fisheries Management Organisations in the management of shared, straddling and highly migratory resources.

[(iv) Address the reduction of subsidies that contribute to unsustainable fishing and introduce new incentives / subsidies that encourage sustainable fisheries / development / management, for example, by catch reduction, turtle excluding devices on trawl nets, construction of fish pots with biodegradable material.]

8.0 Statistics and Research

- 8.1. The Participating States, acting in collaboration with the CRFM, shall decide on the use, management and conservation of living aquatic resources, including aquaculture, on the basis of the best scientific evidence available.

To this end, the Participating States, acting in collaboration with the CRFM shall:

- (a) facilitate research into and comprehensive studies of the marine and freshwater fisheries resources and ecosystems falling within the scope of this Agreement, including the effects of climate change and global warming, environmental, oceanographic, ecological, biological, social and economic factors and fishing technologies;
- (b) facilitate research on aquaculture, including species suitability, adaptive husbandry systems, disease management and production processes to enhance production and yields;
- (c) compile data on the status of fisheries resources and on factors affecting the distribution, abundance and productivity of harvested species and dependent or related species or populations;
- (d) compile data bases on production, yields, species in culture and social and economic aspects of aquaculture;
- (e) ensure the acquisition of catch, effort, social, economic, demographic and other relevant statistics;
- (f) establish and maintain national and regional databases containing catch and effort data on harvested populations, including licensing, registration, social, economic and other relevant data on the fishers and other resource users who depend upon or use the harvested populations;
- (g) where such data and information as mentioned in Articles 8.1 (a), (b), (c), (d) and (e) are collected by Participating States only, each Participating State should make the information collected available to the CRFM, at least on an annual basis;
- (h) analyse, disseminate and publish the information referred to in Articles 8.1 (a), (b), (c), (d) and (e) above at least on an annual basis, in accordance with agreed procedures, and in a manner consistent with any applicable confidentiality requirements;
- (i) identify and study stocks or populations of unutilized and underutilized fisheries resources to determine their distribution, abundance and

- productivity, sustainable harvest levels, and appropriate harvesting methods;
- (j) identify conservation and management needs and analyse the effectiveness of management and conservation measures; and
 - (k) ensure national and regional capacity for addressing data collection and research needs specified in this Section.

9. Intellectual Property Rights

9.1 Ownership of Intellectual Property Rights

- (a) All intellectual property rights in data, documents and products developed by the CRFM within the context of the Common Fisheries Policy shall, subject to and in accordance with any relevant contractual obligation be owned by the CRFM; and Participating States shall retain ownership of any data, information or product they may have submitted to the CRFM;
- (b) All intellectual property rights in data, documents, and products developed within the context of the Common Fisheries Policy shall be owned by the CRFM and the CRFM shall, upon request by a Participating State, grant permission to that State for the use of such rights.
- (c) Where a Participating State provides assistance to the CRFM to develop a product, the intellectual property rights in such product will be jointly owned by the CRFM and the Participating State.
- (d) The CRFM shall in accordance with its policy on public awareness make available to public institutions and others, for non-commercial and educational purposes, such of its informational products as it considers appropriate.

9.2 Confidentiality of data

The CRFM and every Participating State shall maintain the confidentiality of, and refrain from using or disclosing, any confidential and proprietary information of any other Participating State.

9.3 Confidentiality of identity of individuals providing data

The identity of individuals from whom research data or information is obtained shall be kept strictly confidential. No information revealing the identity of any individual shall be included in any report or other communication, unless the individual concerned has given prior consent in writing to such inclusion.

10.0 Dissemination of Information

Subject to Section 9.3:

- 10.1** Participating States and the CRFM shall make available, by dissemination through appropriate channels, information on proposed major programmes and their objectives as well as knowledge resulting from any research.
- 10.2** Participating States, acting individually or in co-operation with other Participating States and with the CRFM, shall actively promote the flow of all forms of relevant information and the transfer of knowledge resulting from research and implementation of successful management programmes especially to interested Participating States.
- 10.3** Participating States shall produce and disseminate reports on their activities at regular intervals, by electronic means or otherwise to the CRFM and to other interested Participating States.
- 10.4** Without prejudice to the right of a Participating State to resort to the procedures for the settlement of disputes provided for in this Agreement, nothing in this Agreement shall be deemed to require a Participating State, in fulfilment of its

obligations under this Agreement, to supply information, the disclosure of which is contrary to its national security interests.

10.5 Participating States and the CRFM shall disseminate relevant information to stakeholders, including but not limited to, fishers and fish processors, to enable them to be familiar with regional and international developments in fisheries and thereby facilitate informed decision-making on their part.

11.0 Registration of Vessels

11.1 Participating States shall take into account the status of available fisheries resources and existing fishing capacity when registering fishing vessels.

11.2 In order to maintain the balance between fishing capacity and fisheries resources, Participating States shall:

- (a) keep an updated national register of fishing vessels flying its flag. Such register shall include minimum information on vessel characteristics and activity that is necessary for the management measures established in collaboration with the CRFM.
- (b) make available to the CRFM the information referred to in Article 10 (1) – (3) of this Agreement.

11.3 In order to assist Participating States in maintaining the balance between fishing capacity and fisheries resources, the CRFM shall:

- (a) provide information on fishing capacity and resource status:
- (b) maintain a regional fishing fleet register containing the information that is received under Article 11 (1) (a) and shall make it available to Participating States. **[The provisions of Article 10.2 and 10.3 (*check*)* shall apply to such register].**

11.4 A Participating State that operates an open register for fishing vessels from Third States authorised to fly its flag shall comply with and shall ensure compliance by its fishing vessels with the following conditions aimed at securing the eradication of illegal, unreported and unregulated fishing: **[(Redraft. There is a disconnect between the chapeau and paragraphs (a) to (e) and (f) ought to stand alone)]**

- (a) Ensure that there is a genuine link between the State and the vessel by, *inter alia*, effectively exercising its jurisdiction and control in administrative, technical, resource management, and social matters;
- (b) Ensure strict compliance with conservation measures, whether general or specific, arising from this Agreement or from decisions of competent international or regional fisheries management organisations pertaining to the target species, area or ecosystems on which the vessel operates;
- (c) Maintain a detailed register from which the owners and operators of fishing vessels, and, as appropriate, a resident agent of the owner of the vessel can be readily identified;
- (d) Establish and maintain vessel monitoring systems to continuously monitor the position, movement and activity of such vessels;
- (e) establish and maintain on board observer programmes to monitor the operation of such vessels and collect data and information on fishing activities;
- (f) **[Any vessel acting in violation of the obligations set out in Article 12.2 (b) (*check*)* should be penalised by the Participating State;]**

12.0 Marketing and Trade of Fisheries Resources

12.1 Each Participating State, in collaboration with the CRFM, shall:

- (a) enact, keep updated and enforce appropriate harmonised food quality assurance legislation and policy for fish and fishery products from the point of harvest or production to the point of sale;

- (b) encourage market stability by appropriate means, implemented in compliance with the Caribbean Region's international commitments, particularly with regard to the provisions of the World Trade Organisation;
- (c) promote policies on the production and marketing of fishery products which take account of the need to conserve and use the resources in a sustainable manner;
- (d) develop markets in fishery products which will include the adoption of measures designed to ensure that supply is better matched to demand in terms of both quality and quantity, and increase the return on products;
- (e) encourage the development and application of common marketing standards for products from fish and fisheries resources thus keeping products of unsatisfactory quality off the market;
- (f) implement programmes to improve product quality;
- (g) monitor developments in internal and external markets and disseminate information to Participating States and, as appropriate, to Third States.
- (h) adopt measures and programmes:
 - (i) to strengthen human resource and institutional capacities and capabilities in fish processing, quality management and distribution and trade in fisheries products;
 - (ii) to acquire, transfer and develop fish processing technologies, improve technical and economic efficiencies in the processing of fisheries products.

13.0 Links with other organizations

- 13.1 The CRFM shall facilitate the development of strategic alliances and partnerships with competent Regional Fisheries Management Organizations (RFMOs) and Bodies and other relevant national, regional, and international agencies and organizations.

14.0 Dispute Settlement

The procedures for the Settlement of Disputes set out in Articles 188 to 192 of the Revised Treaty as well as the procedure set out in Article 15.1 of this Agreement may be adopted for the settlement of disputes arising under this Agreement.

15.1 Adjudication

- (a) Any dispute which may arise concerning the interpretation of or application of any provision of this Agreement shall be notified to the Secretary-General by a Participating State **[or the CRFM]**. The Secretary-General shall appoint an Adjudicator, within ten (10) days of receipt of a notification of a dispute. The Adjudicator shall give a decision in writing within sixty (60) days of his appointment.
- (b) In the event that a Participating State is not in agreement with the decision made by the Adjudicator, it may give notice to the CRFM that the question be referred to an Arbitral Tribunal whose decision shall be final and binding. Pending the decision of the Arbitral Tribunal, the CRFM as it considers necessary, may act on the basis of the decision of the Adjudicator. **[(Please note the need to rationalize (a) and (b). The notice at (b) could be to the Secretary-General rather than the CRFM)*]**
- (c) The expenses of adjudication, including the fees and subsistence allowances of the Adjudicator and experts engaged for the purposes of dispute settlement shall be borne equally by the Parties to the dispute unless the Secretary-General, taking into account the circumstances of the case, otherwise determines. Where a Third Party intervenes in the proceedings, that party shall bear the costs associated with the intervention.

15.2 The Arbitral Tribunal

The Tribunal shall be constituted as follows:

- (a) Each of the Participating States parties to a dispute shall be entitled to appoint one arbitrator from the List of Arbitrators established and maintained by the Secretary-General as required by Article 205 of the Revised Treaty. The two arbitrators chosen by the parties shall be appointed within fifteen days following the decision to refer the matter to arbitration. The two arbitrators shall, within fifteen days following the date of their appointment, appoint a third arbitrator from the List who shall be the Chairperson. As far as practicable, the arbitrators shall not be nationals of any of the parties to the dispute.
- (b) Where either party to the dispute fails to appoint its arbitrator under Article 15.2 (a) above, the Secretary-General shall appoint the arbitrator within ten days. Where the arbitrators fail to appoint a Chairperson within the time prescribed, the Secretary-General shall appoint a Chairperson within ten days.
- (c) Where more than two Participating States are parties to a dispute, the parties concerned shall agree on the two arbitrators to be appointed from the List of Arbitrators within fifteen days following the decision to refer the matter to arbitration and the two arbitrators shall within fifteen days of their appointment appoint a third arbitrator from the List who shall be the Chairperson.
- (d) Where no agreement is reached under Article 15.2 (c) above, the Secretary-General shall appoint the two arbitrators within ten days and where the arbitrators fail to appoint a Chairperson within the time prescribed the Secretary-General shall appoint the Chairperson within ten days.

- (e) Notwithstanding Articles 15.2 (a) (b) ,(c) and (d) above, parties to a dispute may refer the matter to arbitration and consent to the Secretary-General appointing a Sole Arbitrator from the list of Arbitrators. The Sole Arbitrator shall not be a national of a Party to the dispute.
- (f) The Rules of Procedure of the Arbitral Tribunal shall be as follows:
 - (i) The Arbitral Tribunal shall establish its own Rules of Procedure.
 - (ii) The procedure shall assure a right to at least one hearing before the Arbitral Tribunal as well as the opportunity to provide initial and rebuttal written submissions.
 - (iii) The Arbitral Tribunal's hearings, deliberations and initial report, and all written submissions to and communications with the Arbitral Tribunal, shall be confidential.
 - (iv) The award of the Arbitral Tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based.
 - (v) Where the parties cannot agree on the interpretation or implementation of the award, either party may apply to the Arbitral Tribunal for a ruling within thirty days of the award. The term of the Arbitral Tribunal shall come to an end unless an application for a ruling has been received, in which case it shall continue for such reasonable time, not exceeding thirty days, as may be required to make the ruling.
 - (vi) Decisions of the Arbitral Tribunal shall be taken by a majority vote of its members and shall be final and binding on the parties to the dispute.
- (g) A Participating State which is not a party to a dispute but wishes to intervene in the hearing shall deliver a notification to the parties to a dispute and to the Secretary-General and shall, thereafter, be entitled to attend all hearings and to receive written submissions of the parties to a

dispute and may be permitted to make oral or written submissions to the Arbitral Tribunal.

- (h) Where proceedings have commenced, the Arbitral Tribunal may, on its own initiative or at the request of a party to the dispute, seek information and technical advice from any expert or body that it considers appropriate, provided that the parties to the dispute so agree and subject to such terms and conditions as the parties may agree.
- (i) The expenses of the Arbitral Tribunal, including the fees and subsistence allowances of arbitrators and experts engaged for the purposes of a dispute, shall be borne equally by the parties to the dispute unless the Arbitral Tribunal, taking into account the circumstances of the case, otherwise determines. Where a Third Party intervenes in the proceedings, the party shall bear the costs associated with the intervention.

16.0 Public Awareness

16.1 The Participating States shall, in coordination with the CRFM, ensure public awareness of good conservation, exploitation, and management policies and practices in relation to, *inter alia*, this Policy and the Caribbean Sea as a special area in the context of sustainable development by:

- (a) Strengthening Regional and sub-regional institutions to assist in enhancing the capacity of citizens, especially fishers and fishing communities to employ methods of conserving, sustaining and preserving living aquatic resources and of avoiding overexploitation of them.
- (b) Rewarding communities for promoting and maintaining acceptable standards favourable to sustaining living aquatic resources.
- (c) Collaborating with educational institutions to introduce sustainable use of marine and aquatic resources in the school curriculum.

17.0 Inspection, Enforcement and Sanctions

17.1 Inspection and Enforcement

Participating States shall take such inspection and enforcement measures necessary to ensure compliance with the rules of this Policy in their territory or in the waters subject to their sovereignty or under their jurisdiction. They shall also take enforcement measures relating to the fishing activities of their nationals beyond areas of national jurisdiction and of fishing vessels flying their flag.

These measures may include:

- (a) spot checks and inspections on fishing vessels, the premises of businesses and other bodies involved in or concerned with activities relating to this Policy;
- (b) monitoring of fishing vessels;
- (c) investigation, legal pursuit of infringements and sanctions in accordance with Article **17.2**;
- (d) preventative measures in accordance with Article **17.2**;
- (e) measures to prevent the involvement of their nationals in fisheries activities that do not respect the applicable conservation and management measures, without prejudice to the primary responsibility of the flag State.

[(This provision to be reworded so as to enable recognition of developments in international law in respect of port states' responsibility)*]

17.2 Follow-up of infringements

Sanctions

1. Participating States shall ensure that appropriate measures are taken, against natural or legal persons responsible where the rules of this Policy have been breached.
2. The measures taken in accordance with paragraph 1 above shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements and of producing results proportionate to the seriousness of such infringements.
3. The sanctions arising from the proceedings referred to in paragraph 2 above may include,
 - (a) fines;
 - (b) seizure of prohibited fishing gear and catches;
 - (c) sequestration of the vessel;
 - (d) temporary immobilisation of the vessel;
 - (e) suspension of the licence;
 - (f) withdrawal of the licence.
4. Participating States shall take immediate measures to prevent natural or legal persons found committing a breach of this Policy from continuing to do so.
5. Detailed rules for the application of this section may be adopted by Participating States in collaboration with the CRFM.

[This provision to make provision for the adoption of detailed rules for other sections, where relevant, as this applies generally. Perhaps it can stand alone in order to apply to all sections where applicable]*

17.3 State Liability

[A Participating State found by a competent court or tribunal to be in serious breach of its obligations under this Agreement shall be liable in damages to those directly harmed by the breach in question.]

18.0 Signature

18.1 This Agreement shall be open for signature on the day of
2009

19.0 Ratification and Depositary

19.1 This Agreement and any Amendments thereto shall be subject to ratification by Participating States in accordance with their respective constitutional procedures.

19.2 Instruments of Ratification shall be deposited with the Secretary-General who shall transmit certified copies to Participating States.

20.0 Entry into Force

20.1 This Agreement and any Amendment thereto shall enter into force one month after the date of deposit of the seventh Instrument of Ratification by the Signatories referred to in **Article 6.3**.

21.0 Accession

21.1 Any State that is a signatory to the Caribbean Regional Fisheries Mechanism Agreement may accede to this Agreement after it has entered into force.

21.2 Instruments of Accession shall be deposited with the Secretary-General.

22.0 Registration

- 22.1 This Agreement and any Amendment thereto shall be deposited with the Secretary-General and also registered with the Secretary-General of the United Nations.

23.0 Amendments

- 23.1 A Participating State or the CRFM may, by written communication addressed to the Secretary-General, propose an amendment to this Agreement.
- 23.2 Notice of any proposed amendment of this Agreement shall be transmitted to Participating States by the Secretary-General at the same time as the agenda of the meeting of the Ministerial Council of the CRFM at which the amendment is to be discussed.
- 23.3 Any proposed amendment of this Agreement received by the Secretary-General from a Participating State shall be presented to a regular or special meeting of the Ministerial Council of the CRFM for approval and, if the amendment involves important technical changes or imposes additional obligations on Participating States, it shall be considered by a technical advisory working group of specialists convened by the CRFM prior to the regular or special session at which the proposed amendment will be considered.
- 23.4 Any such proposed amendment of this Agreement shall require the unanimous approval of the Ministerial Council of the CRFM and shall enter into force one month after the date on which the seventh Instrument of Ratification is deposited with the Secretary-General as well as with the Secretary-General of the United Nations.
- 23.5 A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with sections 23.3 and 23.4 shall be considered as a Party to this Agreement as amended.

24.0 Reservations

Reservations may be entered to this Agreement with the consent of the Participating States.

25.0 Withdrawal

- 25.1 A Participating State may withdraw from this Agreement by giving one year's notice in writing to the Secretary-General who shall promptly notify the other Participating States. Such withdrawal shall take effect one year after the date on which the notice has been received by the Secretary-General, unless the Participating State, before the withdrawal becomes effective, notifies the Secretary-General in writing of the cancellation of its notice of withdrawal.
- 25.2 A Participating State that withdraws from this Agreement undertakes to honour any financial or other obligations duly assumed as a Participating State; including any proceedings to which it became a party before the withdrawal becomes effective.

26.0 General Undertaking

26.1 Participating States undertake to elaborate Protocols relating, *inter alia*, to:

- (a) Common Fisheries Zone;
- (b) Access to the resources of the Common Fisheries Zone;
- (c) Establishment of a Regional Fisheries Management Organization

[(This is a also a possible location for the general provision with regard to rule-making)]

27.0 Status of Protocols

Protocols which are prepared under this Agreement shall form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to any of its provisions includes a reference to the Protocols relating thereto.

27.0 Authentic text

The Original of this Agreement Establishing the Common Fisheries Policy shall be deposited with the Secretary-General and Registered with the Secretary-General of the United Nations. **[(This does not reflect the heading – it is also a repetition of what was stated earlier – and therefore needs to be reworded.)]**

IN WITNESS WHEREOF the Participating States, being duly authorised thereto, have appended their signature to this Agreement.

DONE AT _____, this _____ day of _____ Two Thousand and
Nine.