



# Earth Negotiations Bulletin

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## FISH CONFERENCE HIGHLIGHTS MONDAY, 24 JULY 1995

The first meeting of the fifth substantive session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks opened yesterday at UN Headquarters in New York. This session of the Conference will further refine the text contained in the Chair's Draft Agreement (A/CONF.164/22/Rev.1) in addition to negotiating unfinished business on Articles 14 and 21. Harmonization of the text into all six UN languages is expected toward the end of the second week.

### PLENARY

Conference Chair, Satya Nandan, opened the Plenary by reminding delegates that the Conference has agreed to conclude its work at this session by adopting an agreement for the conservation and management of straddling fish stocks (SFS) and highly migratory fish stocks (HMFS). He said that national leaders at the 1992 Rio Summit had committed themselves to seeking a better world where natural resources are harvested for the benefit of all in a sustainable and environmentally safe manner. Fishing, both on the high seas and within zones of national jurisdiction, must be more effectively controlled if the sustainability of the world's fishery resources is to be assured.

The work of the Conference has been devoted to constructing a regime for fisheries to have a sustainable future and make an effective contribution to world food security for present and future generations.

Nandan reported on two intersessional meetings. The first, convened by a US initiative, covered the issue of enforcement by non-flag States. The second, convened last week by the Chair at UN Headquarters, dealt with the issue of enforcement. He said a revised draft of Article 21 would be circulated.

The Chair said much of the time at this session must be devoted to technical work relating to the finalization of the text and harmonization in all languages. A conference room paper (A/CONF.164/CRP.7) reflected some preliminary work done by the Secretariat and editorial and translation services. He urged delegates not to re-open issues which are substantially settled, because the text is the product of extensive negotiation and reflects a careful balance.

**CANADA:** The Hon. Brian Tobin, Minister of Fisheries and Oceans for Canada stated that five elements are necessary to ensure effective conservation and management of fisheries: a legally binding agreement; proper conservation and measures that include the adoption of a precautionary approach; compatibility of conservation and management measures both inside and outside 200 miles; a binding and compulsory dispute settlement; and, a mechanism that allows intervention when a flag State is unable or

unwilling to control its vessels on the high seas. He said Canada's fisheries concerns also included the conservation and management of Pacific salmon. A reduction in catches by Canada of 50 percent had not been matched by a corresponding reduction by the State of Alaska.

**POLAND:** Under-Secretary of State, Mr. Tadeusz Szozda, said Poland has recently reached an agreement with the Russian Federation on cooperation in fisheries related to the Sea of Okhotsk. He noted the importance of treating SFS and HMFS as biological units without prejudice to the area in which they are located and argued against including any reference to high seas enclosures in waters under national jurisdiction in the Draft Agreement.

**SAMOA:** The Hon. Misa Telefoni Retzlaff, Minister for Agriculture, Forest and Fisheries, speaking on behalf of the 16 member countries of the South Pacific Forum Fisheries Agency (FFA), said the Draft Agreement, establishes an equitable and balanced regime, a balance between the interests of coastal States and DWFNs, and clear minimum standards for fishery data collection.

**THE EUROPEAN UNION:** Director General J. Almeida Serra, supported the use of a clear, binding instrument based on consensus. He emphasized the importance of: biological unity of stocks, the precautionary approach, compatibility of management and conservation measures, flag State control and responsibility, international cooperation, and the role of open regional and subregional fisheries organizations and arrangements.

**UNITED STATES:** Larry L. Snead, supported the Draft Agreement pointing out that it will effectively complement the recent entry into force of UNCLOS, the adoption of the FAO Fishing Vessel Compliance Agreement, and the CSD review of the oceans chapter of Agenda 21 next year. He emphasized that certain compliance and enforcement issues remain unresolved, but expressed cautious optimism after the intersessional meetings. The US is very interested in resolving the issue of anadromous Pacific salmon stocks.

**NORWAY:** Mr. Dag Mjaaland expressed concern over the status of Article 21, dealing with enforcement. He stated that the Norwegian delegation will address the new issues raised in the intersessional period.

**CHINA:** The delegate from China stated that the Chair's draft Agreement is comprehensive, but expressed concern over the principles of high seas enforcement and equal sharing of resources by States.

**JAPAN:** Horiguchi Matsushiro expressed concern over conservation and management measures to be implemented on the high seas, and stated that Japan is prepared to accept a global boarding and inspection scheme only if it does not prohibit establishment of alternative schemes by regional arrangements. He

This issue of the *Earth Negotiations Bulletin* © <enb@igc.apc.org> is written and edited by Chad Carpenter <ccarpenter@igc.apc.org>, Lewis Clifton <d.l.clifton@city.ac.uk>, Patrick E. Moran <pmoran@strauss.udel.edu>. The Managing Editor of the Bulletin is Langston James Goree VI "Kimo" <kimo@pipeline.com>. Specific funding for coverage of this meeting has been provided by the Norwegian Ministry of Foreign Affairs. The sustaining donors of the *Bulletin* are the International Institute for Sustainable Development <iisd@web.apc.org>, the United Nations Environment Programme and the Pew Charitable Trusts through the Pew Global Stewardship Initiative. General support for the Bulletin during 1995 is provided by the United Kingdom, Switzerland, GTZ and the World Bank. The authors can be contacted at their electronic mail addresses and by phone and fax at +1-212-888-2737. IISD can be contacted at 161 Portage Ave. East, Sixth Floor, Winnipeg, Manitoba R3B 0Y4, Canada and by phone at +1-204-958-7700 and by fax at +1-204-958-7710. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in other publications with appropriate citation. Electronic versions of the *Bulletin* are automatically sent to e-mail distribution lists (ASCII and PDF format) and can be found on the gopher at <gopher.igc.apc.org> and in searchable hypertext through the *Linkages* WWW-server at <http://www.iisd.ca/linkages/> on the Internet.

also reaffirmed a commitment to safeguards against excessive enforcement measures.

**KOREA:** Amb. Womil Cho noted that any agreement must be fully consistent with international law and UNCLOS, and added that effective cooperation must balance responsibility through regional and sub-regional organizations. He called for the development of specific enforcement procedures at the local level and safeguards against abuses of power, and stressed that regional organizations should be open to all interested states.

**PERU:** Amb. Alfonso Arias-Schreiber noted that all states have understood the need for a binding agreement, but no one is fully satisfied with the drafted text of the agreement. He stated that Peru will submit proposals for consideration that are reasonable and consistent with UNCLOS, and urged delegations to adopt a restrictive attitude.

**ARGENTINA:** Ernesto Gondra noted that informal consultations will be necessary to complete the work of this Conference. Overfishing is rampant in waters adjacent to Argentina's EEZ and national pressure for drastic measures has increased. Argentina urged delegates against making amendments, reopening issues, weakening the draft or upsetting the balance already achieved.

**MALAYSIA:** Dato' Shahrom B. HJ. Addul Majid stated the roles of existing subregional and regional organization should be reviewed to take account of new responsibilities in the context of this Draft Agreement. He recognized the FAO as the most appropriate organization to put the finalized agreement into effect, and expressed concern that any regionally agreed system of monitoring, control and surveillance should complement, rather than replace, established systems.

**UKRAINE:** Dep. Min. V. Bondarenko noted that the balance contained in the Draft Agreement resulted from the recognition by states that a legally binding agreement is necessary. He noted the need for better information on fish stocks and recommended a comprehensive study.

**FOOD AND AGRICULTURE ORGANIZATION:** Dr. Margarita Lizarraga stated that FAO has been involved in a parallel process to develop an approach to responsible fisheries and a Code of Conduct. To date, only the articles dealing with fisheries management and fishing operations remain to be agreed upon, and finalization has been left in abeyance pending conclusion of this Conference. The Technical Committee of the FAO Council will consider the Code in Rome from 25 to 29 September 1995, and it is proposed that the finalized Code will be submitted for adoption to Twenty-eighth Session of the FAO Conference in October 1995.

**URUGUAY:** The delegate from Uruguay supported a legally binding convention based on consensus among States to supplement UNCLOS. He emphasized that issues still needed to be addressed in enforcement, regional and subregional decision-making, and interim measures.

**COMISION PERMANENTE DEL PACIFICO SUR (CPPS):** The representative stated that the Chair's Draft Agreement is a significant step forward, but agreed with Peru regarding concerns over Articles 6, 10 and 21. Of particular concern is the use of port States' facilities by those who are known to have acted in contravention to conservation and management measures.

**GREENPEACE INTERNATIONAL:** Mr. Matt Gianni called on delegates to strengthen the text regarding the requirement to use selective fishing gear, compatibility of conservation and management measures, transparency and in expressing the rights of fishworkers. He also urged more effort be directed toward issues such as government subsidies and food security.

## INFORMAL PLENARY

**Chile** expressed concern over Article 8 (3), dealing with the general requirements for membership in regional and subregional arrangements and organizations. He stated this issue is covered in UNCLOS, and suggested the addition of "in accordance with Article 118 of the Convention". The delegate also proposed that Article 5 be modified to allow for coastal State interim control of

fishing activities extending to the high seas until conservation and management measures can be implemented. He expressed concern over Article 5 (j), which cross-references with Annex 1, and stated that the Annex should provide only guidelines to regional organizations and should not be mandatory. **The EU** agreed that Article 8 is very important in protecting all States involved. He said that Article 21 makes it possible for coastal States and regional organizations to impose rules on DWFNs and restated the EU commitment to open membership in these organizations. **Peru** commented that Article 8(3) should refer to organizational functioning in accordance with other provisions of the Convention, and presented specific proposals including: a functional definition of HMFS for Article 1, a requirement that regional and subregional organizations take into account the rights of relevant coastal States in Article 10, and an extended application of Article 21.

**Japan** made several recommendations, including: inserting a reference to regional fishery management organizations into Article 1(a); referring to a stock enhancement programme in Article 5(d); and deleting "where a new fishery is being pursued" from Article 8(2) as too prohibitive. Japan disagreed with the suggested deletion of "best scientific information available" from Article 5(b), suggested that the GEF and CSD may not be appropriate bodies for Article 23 and expressed willingness to explore better language for Article 8(3). **The EU** said that Article 3 (3), on application, must not weaken accepted universal principles, that Article 7 must be strengthened not only with regard to the measures taken, but also their application and that Article 17 (3), dealing with non-participants, also needs strengthening. The EU had some difficulty with the Agreement's provisional entry into force. Referring to the circulation of document A/CONF.164/CRP.7, the EU said the editorial changes undertaken amounted to substantial weakening of the Draft Agreement. **Israel** questioned the word "transparency" in Article 15 and asked for clarification.

**Thailand** recognized the need to board vessels in certain circumstances, but prompt compensation should be effected if the boarding was proven unjustified. It is not possible to "ensure" that flag States vessels do not engage in unauthorized fishing, and he suggested that flag States should "seek to ensure" that unauthorized fishing did not occur within areas under the national jurisdiction of other States. **China** proposed reference to Programme Area D of Agenda 21 in the Preamble. He said the definition of fish is redundant in Article 1 and should be replaced by a definition of SFS. He said Article 14 is unnecessary as the definition of high seas already exists in UNCLOS. **The Russian Federation** said that Articles 13 and 14 dealing with enclosed and semi-enclosed seas and enclaves must be retained in the Draft Agreement. He said that the exclusion of Article 14 would make the Draft Agreement unacceptable. He urged for inclusion of a species listing for SFS.

The Chair stated that a good start had been achieved because it was essential to identify the specific issues pre-occupying some delegations. He added that some issues would need further discussion, while other issues will only waste valuable time. Nandan said the programme of work for today would include informal consultations followed by informal Plenary discussion on A/CONF.164/CRP.7

## IN THE CORRIDORS

In contrast to the many positive statements delivered in Plenary yesterday morning, some delegates are questioning whether two weeks will be sufficient time to agree upon a final text for harmonization into all UN languages.

## THINGS TO LOOK FOR TODAY

**INFORMAL CONSULTATIONS:** The Chair commences informal consultations on Articles 14 and 21 in Room 5 at 9:30 am.

**INFORMAL PLENARY:** Informal Plenary will reconvene in Conference Room 2 at 11:30. The Chair will commence a review of document A/CONF.164/CRP.7

**NGOs:** NGOs will commence a special strategy session in Conference Room A at 10:00 am.