

Annex II

REVIEW PANEL

Establishment

1 A Review Panel to be established in accordance with Article 17 paragraph 5 shall be constituted as follows:

- (a) It shall consist of three members appointed from the list of experts in the field of fisheries drawn up and maintained by the FAO pursuant to Annex VIII, Article 2 of the 1982 Convention or a similar list maintained by the Executive Secretary. The list maintained by the Executive Secretary shall be made up from experts whose competence in the legal, scientific or technical aspects of fisheries covered by this Convention is established and generally recognised and who enjoy the highest reputation for fairness and integrity. Each member of the Commission shall be entitled to nominate up to five experts and shall provide information on relevant qualifications and experience of each of its nominees.
- (b) The Chairperson of the Commission and the member of the Commission that has presented objection to the decision shall each appoint one member. The name of the member appointed by the objecting member of the Commission shall be included in the notification of the objection to the Executive Secretary pursuant to Article 17 paragraph 2 (a). The name of the member appointed by the Chairperson of the Commission shall be notified to the objecting member of the Commission within 10 days of the expiry of the objection period.
- (c) The third member shall be appointed within 20 days of the expiry of the objection period through agreement between the objecting member of the Commission and the Chairperson of the Commission and shall not be a national of the objecting member of the Commission. If there is no agreement within this time period on the appointment of the third member, the appointment shall be made by the Secretary General of the Permanent Court of Arbitration, unless it is agreed that the appointment be made by another person or third State.
- (d) The Review Panel is considered to be established on the date that the third member is appointed, and this third member shall chair the Review Panel.

2 If more than one member of the Commission presents an objection to the decision on the same grounds, or where there is agreement pursuant to Article 17 paragraph 5 (d) that objections to the decision made on different grounds may be dealt with by the same Review Panel, the Review Panel shall consist of 5 members from the lists referred to in paragraph 1 (a) and shall be constituted as follows:

- (a) One member shall be appointed, in accordance with paragraph 1 (b) by the member of the Commission that presented the first objection, two members shall be appointed by the Chairperson of the Commission within 10 days of the expiry of the objection period, one member shall be appointed by agreement between the subsequent objecting members of the Commission within 15 days of the expiry of the objection period and one member shall be appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission within 20 days of the expiry of the objection period. If within the latter two time periods as appropriate, agreement cannot be reached on either of the last two appointments, the appointment or appointments on which agreement has not been reached shall be made by the Secretary General of the Permanent Court of Arbitration unless there is agreement that the appointment or appointments be made by another person or third State.
- (b) The Review Panel is considered to be established on the date that the final member is appointed. The Review Panel shall be chaired by the member appointed by agreement between all the objecting members of the Commission and the Chairperson of the Commission in accordance with subparagraph (a).

3 Any vacancy on a Review Panel shall be filled in the manner described for the initial appointment.

Functioning

4 The Review Panel shall determine its own rules of procedure.

5 A hearing shall be convened at a place and on a date to be determined by the Review Panel within 30 days following its establishment.

6 Any member of the Commission may submit a memorandum to the Review Panel concerning the objection under review and the Panel shall allow any such member of the Commission full opportunity to be heard.

7 Unless the Review Panel decides otherwise because of the particular circumstances of the case, the expenses of the Review Panel, including the remuneration of its members, shall be borne as follows:

- (a) 70 per cent shall be borne by the objecting member of the Commission, or if there is more than one objecting member of the Commission, divided equally amongst them; and
- (b) 30 per cent shall be borne by the Commission from its annual budget.

8 The findings and recommendations of the Review Panel shall be adopted by a majority of its members. Any member of the Panel may attach a separate or dissenting opinion. Any decisions on the procedure of the Review Panel shall also be taken by a majority of its members.

9 The Review Panel shall, within 45 days of its establishment, transmit its findings and recommendations to the Executive Secretary in accordance with Article 17 paragraph 5.

Findings and Recommendations

10 The findings and recommendations of the Review Panel shall be dealt with as follows:

Findings of Discrimination

- (a) If the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures have equivalent effect to the decision to which objection has been presented, the alternative measures shall be deemed to be equivalent to the decision and to be binding on the relevant member or members of the Commission in substitution for the decision.
- (b) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented discriminates in form or in fact against the objecting member or members of the Commission and the alternative measures are equivalent in effect to the decision to which objection has been presented, subject to specific modifications, the Review Panel will recommend such modifications. On receipt of the findings and recommendations of the Review Panel the objecting member or members of the Commission shall, within 60 days, modify the relevant alternative measures as recommended by

the Review Panel or institute dispute settlement proceedings under this Convention. The alternative measures shall be deemed to be equivalent to the decision to which an objection has been presented when they are modified as recommended by the Review Panel. Such alternative measures shall then be binding on the relevant member or members of the Commission in the modified form in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor the modified alternative measures shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (c) Subject to subparagraphs (d) and (e), if the Review Panel finds that the decision to which objection has been presented unjustifiably discriminates in form or in fact against the objecting member or members of the Commission but the alternative measures do not have equivalent effect to the decision to which objection has been presented the objecting member or members of the Commission shall, within 60 days, adopt measures recommended by the Review Panel as equivalent in effect to the decision to which objection has been presented or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission adopt the measures recommended by the Review Panel these measures shall be deemed to be binding on the objecting member or members of the Commission in substitution for the decision. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention then neither the decision nor any measures recommended by the Review Panel shall be binding on the objecting member or members of the Commission pending decisions made in those proceedings.
- (d) Where the Review Panel makes findings and recommendations under subparagraphs (b) or (c) the objecting member or members of the Commission may within 30 days from the date of the transmittal of the notification of those findings and recommendations request an extraordinary meeting of the Commission. The Extraordinary Meeting shall be convened by the Chairperson within 45 days of the receipt of any such request.
- (e) If the Extraordinary Meeting convened under subparagraph (d) confirms or modifies the recommendations of the Review Panel, the 60 day period under subparagraphs (b) or (c) as

appropriate, for the implementation of those findings and recommendations in original or modified form or the institution of dispute settlement proceedings, shall run from the date of the transmittal of the decision of the Extraordinary Meeting. If the Extraordinary Meeting of the Commission decides not to confirm or modify the recommendations of the Review Panel but to revoke the decision to which objection was presented and replace it with a new decision or a modified version of the original decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.

Findings of Inconsistency

- (f) If the Review Panel finds that the decision to which objection has been presented is inconsistent with this Convention, or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement, an Extraordinary Meeting of the Commission shall be convened by the Chairperson within 45 days of the notification of the Review Panel's findings and recommendations to reconsider the decision in the light of those findings and recommendations.
- (g) If the Extraordinary Meeting of the Commission revokes the decision to which objection has been presented and replaces it with a new decision, or a modified version of the previous decision, the new or modified decision shall become binding on the members of the Commission in accordance with Article 17.
- (h) If the Extraordinary Meeting of the Commission confirms its original decision, the objecting member or members of the Commission shall, within 45 days, implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention, the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

Findings of Non-justification of Objection

- (i) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant

international law as reflected in the 1982 Convention or the 1995 Agreement, the objecting member or members of the Commission shall, subject to subparagraph (j), within 45 days implement the decision or institute dispute settlement proceedings under this Convention. If the objecting member or members of the Commission choose to institute dispute settlement proceedings under this Convention the decision shall not be binding on the objecting member or members of the Commission pending decisions made in those proceedings.

- (j) If the Review Panel finds that the decision to which objection has been presented does not discriminate in form or in fact against the objecting member or members of the Commission and is not inconsistent with this Convention or with relevant international law as reflected in the 1982 Convention or the 1995 Agreement but that the alternative measures are equivalent in effect to the decision and should be accepted as such by the Commission, the alternative measures shall be binding on the objecting member or members of the Commission in substitution for the decision pending confirmation of their acceptance by the Commission at its next meeting.