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International Affairs, Law of the Sea and Regional Fisheries Organisations

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Mr Bill MANSFIELD
Chair
South Pacific Regional Fisheries
Management Organisation
New Zealand

**Subject: 7th Meeting for the establishment of a new South Pacific RFMO –
(Lima, 18/22 May 2009)**

Dear Mr. Mansfield,

First of all, we would like to thank you for your letter of 6th April 2009 enclosing the fifth revision of your text, which we have studied with much interest.

The European Community would like to express its appreciation for your inter-sessional work; our evaluation of the new Chair's Draft text is quite positive, and we noticed several elements of improvements and progress which could be helpful to get Participants closer to common positions and, hopefully, conclusions of these negotiations.

The European Community is aware the some work remains to be done, but we would like to stress, as we did during the Canberra meeting, that we commit ourselves to work constructively with other Participants, in order to accelerate this negotiating process which is now entering in its fourth year.

The common objective should be, in our view, to conclude these negotiations by the end of 2009.

We, therefore, keep on supporting your proposal to work mainly in a small working group mode, as we did during the last two plenary sessions, and we would invite all Delegations to make any effort to keep their participation in the room for this working group at the level of two, maximum three representatives per Delegation, with the view of facilitating the discussions.

Regarding our comments on your Draft Agreement text - Rev. 5, the European Community would like to share with you some preliminary comments, notably:

- In general terms, in the EC perspective, there is still room for simplification in this rev 5 text, and for some increased balance between the main purposes of this Convention, management of non tuna stock in South Pacific, and its environmental implications, without jeopardising the ecosystem and precautionary approach which are broadly recognised all over the text.

We still think that the text is too detailed and contains a lot of elements of secondary legislation, which could be dealt with in future negotiations once the organisation will start working.

Our concern is that with the current level of details appearing in several articles, these negotiations could still take a long time before their conclusion, whilst our main goal should be to allow the organisation to be settled and start working.

- Article 3 – Conservation and management principle and approaches

We surely appreciate your effort to simplify the text by deleting the definition of precautionary approach and ecosystem approach in article 1, and the addition of these two definitions in new Article 3.

Notwithstanding that, we think that the precautionary approach, as in UNFSA, could be considered as a general principle, therefore we do not think is necessary to add "approaches" in the heading of article 3. At the same time, we would avoid a detailed definition of how this approach/principle should be implemented by the future organisation.

The ecosystem approach could be also considered as a general principle of the new Convention, and for its definition it is our opinion that a reference to the declaration adopted at the Reykjavik conference on responsible fisheries in the marine ecosystem - 2001, as well as to the Plan of Implementation of the World Summit on Sustainable Development of Johannesburg 2002 could be made.

- Article 4 - Balance of interests between Parties

We are pleased to see that a specific article 4 on compatibility has been confirmed in your Draft text. We are ready to work with other participants on this basis.

The EC main goal is to find all over the text a balance between the interests of coastal States and those of long distance fishing nations.

- Article 6 – The Organisation

The EC is still convinced that in such a structure, with the very likely important financial commitments that Parties will have to take to grant a proper functioning of this organisation, the establishment of a Financial Committee should be foreseen.

- Article 10 – Scientific Committee

The EC position is that this article is too detailed, and it risks inserting an element of rigidity that could hamper the proper functioning of the Scientific Committee of this Organisation, in particular if new tools or concepts appear or replace the existing ones in the future.

We are still keen in suggesting the version of this article included in the EC Draft Agreement text tabled in Noumea in September 2007 (article 9 of that text), and in particular the paragraphs 8, 9 and 10 of that article which state the main tasks of the Scientific Committee.

- Article 12 - Structure of the Organisation – Sub-Committees

Notwithstanding our initial (confirmed) position of considering a simple structure the best way to allow the Organisation to meet its basic management objectives, we are aware of the importance of this article for some Delegations, especially coastal States.

As stated in Canberra, the EC is looking at this issue with flexibility, taking into account the basic principle of our position, i.e. the final decision will remain in the hands of the Commission's plenary. Along this line we think that there is margin for improvement in the wording of current paragraph 7 of article 12.

- Article 15 and 16 - Decision making

We are pleased to see that Rev. 5 includes a version of decision making process more close to the EC suggestion and position, and which appears to be in line with the more recent approaches on this issue. We are ready to discuss with the other participants on this basis. However, we have to take note that emergency measures are not open to the objection procedure (current article 16), and this could create a problem for the EC Delegation.

- Article 28 – Observer programme

We believe that the observers programme should be focused on scientific purposes and not compliance ones, considering that an inspection programme is also foreseen in art. 27 on monitoring, compliance and enforcement.

- Amendment, ratification accessions etc

We believe that these provisions will require some further consideration in order to ensure consistency in the approach taken. We are afraid that the requirement of ratification of any amendment by all State Parties would delay for a very long time its entry into force. We would prefer to have a simplified procedure as that exist for instance in NAFO.

On other elements, not mentioned in this correspondence, the EC will express itself during the meetings in Lima.

The European Community would also like to draw again your attention on the need to ensure that all participants to the forthcoming Lima meeting will be officially accredited by their proper governmental authorities, providing you with an official communication on their participation, the composition of their delegations and the titles of their representatives.

We look forward working with you and other delegations at the up-coming meeting in Lima.

I would be grateful if this correspondence is circulated to other participants as soon as possible.

Yours sincerely,

'Signed'
Roberto CESARI
EC Head of Delegation
to SPRFMO

Cc: Mr. Robin Allen
Messrs Alexandrou, Wieland, Morin, Ms. Kordecka.