



# Premier of Queensland

For reply please quote: IGRWL – TF/11/26747 – DOC/11/162840

06 NOV 2011

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Dear Mr Laurie

In accordance with parliamentary procedures, I wish to table correspondence from the Commonwealth Parliament's Joint Standing Committee on Treaties (JSCOT) in the Legislative Assembly.

The material for tabling includes JSCOT's advice and the following proposed treaty actions:

Treaties tabled on 13 September 2011

- *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006 Signed for Australia in Rome, 29 December 2006)*
- *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009).*

Treaty texts and copies of the National Interest Analyses — which accompany each treaty tabled — and Regulation Impact Statements, where applicable, are available online from the JSCOT website at the following link:

[www.aph.gov.au/house/committee/jsct/13sept2011/index.htm](http://www.aph.gov.au/house/committee/jsct/13sept2011/index.htm).

Thank you for your assistance in arranging the tabling of this material as soon as possible.

Yours sincerely

ANNA BLIGH MP  
PREMIER OF QUEENSLAND

\*Encl



Queensland  
Government



# PARLIAMENT of AUSTRALIA

## JOINT STANDING COMMITTEE ON TREATIES

Parliament House, Canberra ACT 2600 | Phone: (02) 6277 4002 | Fax: (02) 6277 2219 | Email: jsct@aph.gov.au

13 September 2011

The Hon Anna Bligh MP  
Premier of Queensland  
Parliament House  
BRISBANE QLD 4002

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Dear Premier

### Treaties tabled on 13 September 2011

I am writing to advise of the most recent tabling of treaties, and to invite comments as part of the review process undertaken by the Commonwealth Parliament's Joint Standing Committee on Treaties.

Before action is taken to bind Australia to the terms of treaties, the Treaties Committee considers and reports on whether the proposals are in Australia's national interest. The Committee is currently inquiring into the following proposed treaties tabled in both Houses of the Parliament this week:

#### Treaties tabled on 13 September 2011

- *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006 Signed for Australia in Rome, 29 December 2006)*
- *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)*


The subject matter of international treaties can be of interest to State and Territory Governments and Parliaments and we are keen to provide an opportunity for comment on any issues arising from proposed treaties. Treaty texts and copies of the National Interest Analysis (which accompany each treaty tabled) are available from the Committee's website at

<http://www.aph.gov.au/house/committee/jsct/13sept2011/tor.htm>

As the Treaties Committee has periods of 15 and 20 sitting days in which to complete its reviews, it would be helpful if you could forward any comments you might wish to make to the Committee Secretariat by **Friday, 14 October 2011**. If substantial issues of concern are raised about the proposed treaties and the Committee's usual period of review is extended, it may be possible to arrange for a submission to be lodged after this date. Your comments may be accepted as a submission to the review and authorised for publication.

Should your officials have any questions about the treaties or about our review procedures, they should contact James Catchpole, Committee Secretary on telephone (02) 6277 4002, facsimile (02) 6277 2219 or e-mail [jsct@aph.gov.au](mailto:jsct@aph.gov.au).

Yours faithfully



**Senator Simon Birmingham**  
Acting Chair

RECEIVED  
19 SEP 2011  
IN MCIU

**DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA**

**SOUTHERN INDIAN OCEAN FISHERIES AGREEMENT**

**Rome, 29 December 2006**

**Signed for Australia in Rome, 29 December 2006**

Not yet in force  
[2006] ATNIF 31

# SOUTHERN INDIAN OCEAN FISHERIES AGREEMENT

## THE CONTRACTING PARTIES

**HAVING A MUTUAL INTEREST** in the proper management, long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean, and desiring to further the attainment of their objectives through international cooperation;

**TAKING INTO CONSIDERATION** that the coastal States have waters under national jurisdiction in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 and general principles of international law, within which they exercise their sovereign rights for the purpose of exploring and exploiting, conserving and managing fishery resources and conserving living marine resources upon which fishing has an impact;

**RECALLING THE RELEVANT PROVISIONS** of the United Nations Convention on the Law of the Sea of 10 December 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations on 31 October 1995;

**RECALLING FURTHER** Article 17 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995, and the need for non-Contracting Parties to this Southern Indian Ocean Fisheries Agreement to apply the conservation and management measures adopted hereunder and not to authorise vessels flying their flag to engage in fishing activities inconsistent with the conservation and sustainable use of the fishery resources to which this Agreement applies;

**RECOGNIZING** economic and geographical considerations and the special requirements of developing States, in particular the least-developed among them and small island developing States and their coastal communities, for equitable benefit from fishery resources;

**DESIRING** cooperation between coastal States and all other States, organizations and fishing entities having an interest in the fishery resources of the Southern Indian Ocean to ensure compatible conservation and management measures;

**BEARING IN MIND** that the achievement of the above will contribute to the realization of a just and equitable economic order in the interests of all humankind, and in particular the special interests and needs of developing States, in particular the least-developed among them and small island developing States;

**CONVINCED** that the conclusion of a multilateral agreement for the long-term conservation and sustainable use of fishery resources in waters beyond national jurisdiction in the Southern Indian Ocean would best serve these objectives;

**AGREE AS FOLLOWS:**

## **ARTICLE 1 – DEFINITIONS**

For the purposes of this Agreement:

(a) "1982 Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "1995 Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;

(c) "Area" means the area to which this Agreement applies, as prescribed in Article 3;

(d) "Code of Conduct" means the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations on 31 October 1995;

(e) "Contracting Party" means any State or regional economic integration organization which has consented to be bound by this Agreement and for which the Agreement is in force;

(f) "fishery resources" means resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:

(i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77(4) of the 1982 Convention; and

(ii) highly migratory species listed in Annex I of the 1982 Convention;

(g) "fishing" means:

(i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;

(ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;

(iii) placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons;

(iv) any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health or safety of crew members or the safety of a vessel; or

(v) the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(h) "fishing entity" means a fishing entity as referred to in Article 1(3) of the 1995 Agreement;

(i) "fishing vessel" means any vessel used or intended for fishing, including a mother ship, any other vessel directly engaged in fishing operations, and any vessel engaged in transshipment;

(j) "nationals" includes both natural and legal persons;

(k) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(l) "transshipment" means the unloading of all or any of the fishery resources on board a fishing vessel onto another vessel whether at sea or in port.

## **ARTICLE 2 – OBJECTIVES**

The objectives of this Agreement are to ensure the long-term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development of fisheries in the Area, taking into account the needs of developing States bordering the Area that are Contracting Parties to this Agreement, and in particular the least-developed among them and small island developing States.

## **ARTICLE 3 – AREA OF APPLICATION**

1. This Agreement applies to the Area bounded by a line joining the following points along parallels of latitude and meridians of longitude, excluding waters under national jurisdiction:

Commencing at the landfall on the continent of Africa of the parallel of 10° North; from there east along that parallel to its intersection with the meridian of 65° East; from there south along that meridian to its intersection with the equator; from there east along the equator to its intersection with the meridian of 80° East; from there south along that meridian to its intersection with the parallel of 20° South; from there east along that parallel to its landfall on the continent of Australia; from there south and then east along the coast of Australia to its intersection with the meridian of 120° East; from there south along that meridian to its intersection with the parallel of 55° South; from there west along that parallel to its intersection with the meridian of 80° East; from there north along that meridian to its intersection with the parallel of 45° South; from there west along that parallel to its intersection with the meridian of 30° East; from there north along that meridian to its landfall on the continent of Africa.

2. Where for the purpose of this Agreement it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by

reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).

#### **ARTICLE 4 – GENERAL PRINCIPLES**

In giving effect to the duty to cooperate in accordance with the 1982 Convention and international law, the Contracting Parties shall apply, in particular, the following principles:

(a) measures shall be adopted on the basis of the best scientific evidence available to ensure the long-term conservation of fishery resources, taking into account the sustainable use of such resources and implementing an ecosystem approach to their management;

(b) measures shall be taken to ensure that the level of fishing activity is commensurate with the sustainable use of the fishery resources;

(c) the precautionary approach shall be applied in accordance with the Code of Conduct and the 1995 Agreement, whereby the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures;

(d) the fishery resources shall be managed so that they are maintained at levels that are capable of producing the maximum sustainable yield, and depleted stocks of fishery resources are rebuilt to the said levels;

(e) fishing practices and management measures shall take due account of the need to minimize the harmful impact that fishing activities may have on the marine environment;

(f) biodiversity in the marine environment shall be protected; and

(g) the special requirements of developing States bordering the Area that are Contracting Parties to this Agreement, and in particular the least-developed among them and small island developing States, shall be given full recognition.

#### **ARTICLE 5 – MEETING OF THE PARTIES**

1. The Contracting Parties shall meet periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto.

2. The ordinary Meeting of the Parties shall, unless the Meeting otherwise decides, take place at least once a year and, to the extent practicable, back-to-back with meetings of the South West Indian Ocean Fisheries Commission. The Contracting Parties may also hold extraordinary meetings when deemed necessary.

3. The Meeting of the Parties shall, by consensus, adopt and amend its own Rules of Procedure and those of its subsidiary bodies.

4. The Contracting Parties, at their first meeting, shall consider the adoption of a budget



to fund the conduct of the Meeting of the Parties and the exercise of its functions and accompanying financial regulations. The financial regulations shall set out the criteria governing the determination of the amount of each Contracting Party's contribution to the budget, giving due consideration to the economic status of Contracting Parties which are developing States, and in particular the least-developed among them and small island developing States, and ensuring that an adequate share of the budget is borne by Contracting Parties that benefit from fishing in the Area.

## **ARTICLE 6 – FUNCTIONS OF THE MEETING OF THE PARTIES**

1. The Meeting of the Parties shall:

(a) review the state of fishery resources, including their abundance and the level of their exploitation;

(b) promote and, as appropriate, co-ordinate research activities as required on the fishery resources and on straddling stocks occurring in waters under national jurisdiction adjacent to the Area, including discarded catch and the impact of fishing on the marine environment;

(c) evaluate the impact of fishing on the fishery resources and on the marine environment, taking into account the environmental and oceanographic characteristics of the Area, other human activities and environmental factors;

(d) formulate and adopt conservation and management measures necessary for ensuring the long-term sustainability of the fishery resources, taking into account the need to protect marine biodiversity, based on the best scientific evidence available;

(e) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;

(f) develop rules for the collection and verification of scientific and statistical data, as well as for the submission, publication, dissemination and use of such data;

(g) promote cooperation and coordination among Contracting Parties to ensure that conservation and management measures for straddling stocks occurring in waters under national jurisdiction adjacent to the Area and measures adopted by the Meeting of the Parties for the fishery resources are compatible;

(h) develop rules and procedures for the monitoring, control and surveillance of fishing activities in order to ensure compliance with conservation and management measures adopted by the Meeting of the Parties including, where appropriate, a system of verification incorporating vessel monitoring and observation, and rules concerning the boarding and inspection of vessels operating in the Area;

(i) develop and monitor measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;

(j) in accordance with international law and any applicable instruments, draw the attention of any non-Contracting Parties to any activities which undermine the attainment of the objectives of this Agreement;

(k) establish the criteria for and rules governing participation in fishing; and

(l) carry out any other tasks and functions necessary to achieve the objectives of this Agreement.

2. In determining criteria for participation in fishing, including allocation of total allowable catch or total level of fishing effort, the Contracting Parties shall take into account, inter alia, international principles such as those contained in the 1995 Agreement.

3. In applying the provisions of paragraph 2, the Contracting Parties may, inter alia:

(a) designate annual quota allocations or fishing effort limitations for Contracting Parties;

(b) allocate catch quantities for exploration and scientific research; and

(c) set aside fishing opportunities for non-Contracting Parties to this Agreement, if necessary.

4. The Meeting of Parties shall, subject to agreed rules, review quota allocations and fishing effort limitations of Contracting Parties and participation in fishing opportunities of non-Contracting Parties taking into account, inter alia, information on the implementation by Contracting and non-Contracting Parties of the conservation and management measures adopted by the Meeting of the Parties.

## **ARTICLE 7 – SUBSIDIARY BODIES**

1. The Meeting of the Parties shall establish a permanent Scientific Committee, which shall meet, unless the Meeting of the Parties otherwise decides, at least once a year, and preferably prior to the Meeting of the Parties, in accordance with the following provisions:

(a) the functions of the Scientific Committee shall be:

(i) to conduct the scientific assessment of the fishery resources and the impact of fishing on the marine environment, taking into account the environmental and oceanographic characteristics of the Area, and the results of relevant scientific research;

(ii) to encourage and promote cooperation in scientific research in order to improve knowledge of the state of the fishery resources;

(iii) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of the conservation and management measures referred to in Article 6(1)(d);

(iv) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of measures regarding the monitoring of fishing activities;

(v) to provide scientific advice and recommendations to the Meeting of the Parties on appropriate standards and format for fishery data collection and exchange; and

(vi) any other scientific function that the Meeting of the Parties may decide;

(b) in developing advice and recommendations the Scientific Committee shall take into consideration the work of the South West Indian Ocean Fisheries Commission as well as that of other relevant research organizations and regional fisheries management organizations.

2. Once the measures referred to in Article 6 are taken, the Meeting of the Parties shall establish a Compliance Committee, to verify the implementation of and compliance with such measures. The Compliance Committee shall meet, in conjunction with the Meeting of the Parties, as provided for in the Rules of Procedure and shall report, advise and make recommendations to the Meeting of the Parties.

3. The Meeting of the Parties may also establish such temporary, special or standing committees as may be required, to study and report on matters pertaining to the implementation of the objectives of this Agreement, and working groups to study, and submit recommendations on, specific technical problems.

#### **ARTICLE 8 – DECISION MAKING**

1. Unless otherwise provided in this Agreement, decisions of the Meeting of the Parties and its subsidiary bodies on matters of substance shall be taken by the consensus of the Contracting Parties present, where consensus means the absence of any formal objection made at the time a decision is taken. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 shall be taken by a simple majority of the Contracting Parties present and voting.

3. Decisions adopted by the Meeting of the Parties shall be binding on all Contracting Parties.

#### **ARTICLE 9 – SECRETARIAT**

The Meeting of the Parties shall decide on arrangements for the carrying out of secretariat services, or the establishment of a Secretariat, to perform the following functions:

(a) implementing and coordinating the administrative provisions of this Agreement, including the compilation and distribution of the official report of the Meeting of the Parties;

(b) maintaining a complete record of the proceedings of the Meeting of the Parties and its subsidiary bodies, as well as a complete archive of any other official documents pertaining to the implementation of this Agreement; and

(c) any other function that the Meeting of the Parties may decide.

#### **ARTICLE 10 – CONTRACTING PARTY DUTIES**

1. Each Contracting Party shall, in respect of its activities within the Area:

(a) promptly implement this Agreement and any conservation, management and other measures or matters which may be agreed by the Meeting of the Parties;

(b) take appropriate measures in order to ensure the effectiveness of the measures adopted by the Meeting of the Parties;

(c) collect and exchange scientific, technical and statistical data with respect to the fishery resources and ensure that:

(i) data is collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the rules adopted by the Meeting of the Parties;

(ii) appropriate measures are taken to verify the accuracy of such data;

(iii) such statistical, biological and other data and information as the Meeting of the Parties may decide is provided annually; and

(iv) information on steps taken to implement the conservation and management measures adopted by the Meeting of the Parties is provided in a timely manner.

2. Each Contracting Party shall make available to the Meeting of the Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this Article and, in the case of coastal States that are Contracting Parties to this Agreement, as regards the conservation and management measures they have taken for straddling stocks occurring in waters under their jurisdiction adjacent to the Area.

3. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, to the greatest extent possible, take measures, or cooperate, to ensure that its nationals and fishing vessels owned or operated by its nationals fishing in the Area comply with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of the Parties.

4. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged serious violation within the meaning of the 1995 Agreement by its nationals, or fishing vessels owned or operated by its nationals, of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of the Parties. A reply, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. A report on the outcome of the investigation shall be provided to the Meeting of the Parties when the investigation is completed.

#### **ARTICLE 11 – FLAG STATE DUTIES**

1. Each Contracting Party shall take such measures as may be necessary to ensure that:

(a) fishing vessels flying its flag operating in the Area comply with the provisions of this Agreement and the conservation and management measures adopted by the Meeting of the Parties and that such vessels do not engage in any activity which undermines the effectiveness of such measures;

(b) fishing vessels flying its flag do not conduct unauthorized fishing within waters under national jurisdiction adjacent to the Area; and

(c) it develops and implements a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Area.

2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that Contracting Party.

3. Each Contracting Party shall:

(a) authorize the use of vessels flying its flag for fishing in waters beyond national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law;

(b) maintain a record of fishing vessels entitled to fly its flag and authorized to fish for the fishery resources, and ensure that, for all such vessels, such information as may be specified by the Meeting of the Parties is entered in that record. Contracting Parties shall exchange this information in accordance with such procedures as may be agreed by the Meeting of the Parties;

(c) in conformity with the rules determined by the Meeting of the Parties, make available to each annual Meeting of the Parties a report on its fishing activities in the Area;

(d) collect and share in a timely manner, complete and accurate data concerning fishing activities by vessels flying its flag operating in the area, in particular on vessel position, retained catch, discarded catch and fishing effort, where appropriate maintaining confidentiality of data as it relates to the application of relevant national legislation; and

(e) to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged serious violation within the meaning of the 1995 Agreement by fishing vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of the Parties. A reply, including details of any action taken or proposed to be taken in relation to such alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. A report on the outcome of the investigation shall be provided to the Meeting of the Parties when the investigation is completed.

## **ARTICLE 12 – PORT STATE DUTIES**

1. Measures taken by a port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures, a port

State Contracting Party shall not discriminate in form or in fact against the fishing vessels of any State.

2. Each port State Contracting Party shall:

(a) in accordance with the conservation and management measures adopted by the Meeting of the Parties, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals;

(b) not permit landings, transshipment, or supply services in relation to fishing vessels unless they are satisfied that fish on board the vessel have been caught in a manner consistent with the conservation and management measures adopted by the Meeting of the Parties; and

(c) provide assistance to flag State Contracting Parties, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports or at its offshore terminals and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of the Parties.

3. In the event that a port State Contracting Party considers that a vessel of another Contracting Party making use of its ports or offshore terminals has violated a provision of this Agreement or a conservation and management measure adopted by the Meeting of the Parties, it shall draw this to the attention of the flag State concerned and of the Meeting of the Parties. The port State Contracting Party shall provide the flag State and the Meeting of the Parties with full documentation of the matter, including any record of inspection.

4. Nothing in this Article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

### **ARTICLE 13 – SPECIAL REQUIREMENTS OF DEVELOPING STATES**

1. The Contracting Parties shall give full recognition to the special requirements of developing States bordering the Area, in particular the least-developed among them and small island developing States, in relation to the conservation and management of fishery resources and the sustainable development of such resources.

2. The Contracting Parties recognize, in particular:

(a) the vulnerability of developing States bordering the Area, in particular the least-developed among them and small island developing States, that are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and fishworkers; and

(c) the need to ensure that conservation and management measures adopted by the Meeting of the Parties do not result in transferring, directly or indirectly, a

disproportionate burden of conservation action onto developing States bordering the Area, in particular the least-developed among them and small island developing States.

3. Cooperation by the Contracting Parties under the provisions of this Agreement and through other subregional or regional organizations involved in the management of marine living resources should include action for the purposes of:

(a) enhancing the ability of developing States bordering the Area, in particular the least-developed among them and small island developing States, to conserve and manage fishery resources and to develop their own fisheries for such resources; and

(b) assisting developing States bordering the Area, in particular the least-developed among them and small island developing States, to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Agreement.

4. Cooperation with developing States bordering the Area, in particular the least-developed among them and small island developing States, for the purposes set out in this Article should include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:

(a) improved conservation and management of the fishery resources and of straddling stocks occurring in waters under national jurisdiction adjacent to the Area, which can include the collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) improved information collection and management of the impact of fishing activities on the marine environment;

(c) stock assessment and scientific research;

(d) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology; and

(e) participation in the Meeting of the Parties and meetings of its subsidiary bodies as well as in the settlement of disputes.

#### **ARTICLE 14 – TRANSPARENCY**

1. The Contracting Parties shall promote transparency in decision making processes and other activities carried out under this Agreement.

2. Coastal States with waters under national jurisdiction adjacent to the Area that are not Contracting Parties to this Agreement shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

3. Non-Contracting Parties to this Agreement shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

4. Intergovernmental organizations concerned with matters relevant to the implementation of this Agreement, in particular the Food and Agriculture Organization of the United Nations, the South West Indian Ocean Fisheries Commission, and regional fisheries management organizations with competence over high seas waters adjacent to the Area, shall be entitled to participate as observers in the Meeting of the Parties and meetings of its subsidiary bodies.

5. Representatives from non-governmental organizations concerned with matters relevant to the implementation of this Agreement shall be afforded the opportunity to participate in the Meeting of the Parties and meetings of its subsidiary bodies as observers or otherwise as determined by the Meeting of the Parties. The Rules of Procedure of the Meeting of the Parties and its subsidiary bodies shall provide for such participation. The procedures shall not be unduly restrictive in this respect.

6. Observers shall be given timely access to pertinent information subject to the Rules of Procedure, including those concerning confidentiality requirements, which the Meeting of the Parties may adopt.



## **ARTICLE 15 – FISHING ENTITIES**

1. After the entry into force of this Agreement any fishing entity whose vessels have fished or intend to fish for fishery resources in the Area may, by a written instrument delivered to the Chairperson of the Meeting of the Parties, in accordance with such procedures as may be established by the Meeting of the Parties, express its firm commitment to be bound by the terms of this Agreement. Such commitment shall become effective thirty (30) days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Chairperson of the Meeting of the Parties. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Chairperson of the Meeting of the Parties.

2. A fishing entity which has expressed its commitment to be bound by the terms of this Agreement may participate in the Meeting of the Parties and its subsidiary bodies, and partake in decision making, in accordance with the Rules of Procedure adopted by the Meeting of the Parties. Articles 1 to 18 and 20.2 apply, *mutatis mutandis*, to such a fishing entity.

## **ARTICLE 16 – COOPERATION WITH OTHER ORGANIZATIONS**

The Contracting Parties, acting jointly under this Agreement, shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular with the South West Indian Ocean Fisheries Commission and any other regional fisheries management organization with competence over high seas waters adjacent to the Area.

## **ARTICLE 17 – NON-CONTRACTING PARTIES**

1. Contracting Parties shall take measures consistent with this Agreement, the 1995 Agreement and international law to deter the activities of vessels flying the flags of non-Contracting Parties to this Agreement which undermine the effectiveness of conservation and management measures adopted by the Meeting of the Parties or the attainment of the objectives of this Agreement.

2. Contracting Parties shall exchange information on the activities of fishing vessels flying the flags of non-Contracting Parties to this Agreement which are engaged in fishing operations in the Area.

3. Contracting Parties shall draw the attention of any non-Contracting Party to this Agreement to any activity undertaken by its nationals or vessels flying its flag which, in the opinion of the Contracting Party, undermines the effectiveness of conservation and management measures adopted by the Meeting of the Parties or the attainment of the objectives of this Agreement.

4. Contracting Parties shall, individually or jointly, request non-Contracting Parties to this Agreement whose vessels fish in the Area to cooperate fully in the implementation of conservation and management measures adopted by the Meeting of the Parties with a view to ensuring that such measures are applied to all fishing activities in the Area. Such cooperating non-Contracting Parties to this Agreement shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and

their record of compliance with, conservation and management measures in respect of the relevant stocks of fishery resources.

#### **ARTICLE 18 – GOOD FAITH AND ABUSE OF RIGHT**

Each Contracting Party shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

#### **ARTICLE 19 – RELATION TO OTHER AGREEMENTS**

Nothing in this Agreement shall prejudice the rights and obligations of States under the 1982 Convention or the 1995 Agreement.

#### **ARTICLE 20 – INTERPRETATION AND SETTLEMENT OF DISPUTES**

1. Contracting Parties shall use their best endeavours to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to either of these instruments.

2. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Agreement and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

#### **ARTICLE 21 – AMENDMENTS**

1. Any Contracting Party may propose an amendment to the Agreement by providing to the Depositary the text of a proposed amendment at least sixty (60) days in advance of an ordinary Meeting of the Parties. The Depositary shall circulate a copy of this text to all other Contracting Parties promptly.

2. Amendments to the Agreement shall be adopted by consensus of all Contracting Parties.

3. Amendments to the Agreement shall enter into force ninety (90) days after all Contracting Parties which held this status at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.

#### **ARTICLE 22 – SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL**

1. This Agreement shall be open for signature by:

(a) the States and regional economic integration organization participating in the Inter-Governmental Consultation on the Southern Indian Ocean Fisheries Agreement; and

(b) any other State having jurisdiction over waters adjacent to the Area;

and shall remain open for signature for twelve (12) months from 7 July 2006 (the date of opening for signature).

2. This Agreement is subject to ratification, acceptance or approval by the signatories.
3. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

#### **ARTICLE 23 – ACCESSION**

1. This Agreement shall be open for accession, after its closure for signature, by any State or regional economic integration organization referred to in Article 22.1, and by any other State or regional economic integration organization interested in fishing activities in relation to the fishery resources.
2. Instruments of accession shall be deposited with the Depositary.

#### **ARTICLE 24 – ENTRY INTO FORCE**

1. This Agreement shall enter into force ninety (90) days from the date of receipt by the Depositary of the fourth instrument of ratification, acceptance or approval, at least two of which have been deposited by coastal States bordering the Area.
2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force for that signatory thirty (30) days after the deposit of its instrument of ratification, acceptance or approval.
3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force for that State or regional economic integration organization thirty (30) days after the deposit of its instrument of accession.

#### **ARTICLE 25 – THE DEPOSITARY**

1. The Director-General of the Food and Agriculture Organization of the United Nations shall be the Depositary of this Agreement and of any amendments thereto. The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.
2. The Depositary shall inform all signatories of and Contracting Parties to this Agreement of signatures and of instruments of ratification, accession, acceptance or approval deposited under Articles 22 and 23 and of the date of entry into force of the Agreement under Article 24.

#### **ARTICLE 26 – WITHDRAWAL**

Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Contracting Party, by giving written notice of such withdrawal to the Depositary who shall immediately inform all the Contracting Parties of such withdrawal. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Depositary.

#### **ARTICLE 27 – TERMINATION**

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below three.

#### **ARTICLE 28 – RESERVATIONS**

1. Ratification, acceptance or approval of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Contracting Parties to this Agreement. The Depositary shall notify forthwith all Contracting Parties of any reservation. Contracting Parties not having replied within three (3) months from the date of notification shall be deemed to have accepted the reservation. Failing such acceptance, the State or regional economic integration organization making the reservation shall not become a Contracting Party to this Agreement.

2. Nothing in paragraph 1 shall prevent a State or a regional economic integration organization on behalf of a State from making a reservation with regard to membership acquired through territories and surrounding maritime areas over which the State asserts its rights to exercise sovereignty or territorial and maritime jurisdiction.

**IN WITNESS WHEREOF**, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.

**DONE in Rome on this Seventh day of July 2006 in English and French, both texts being equally authoritative.**

**In the name of Australia:**

**In the name of China:**

**In the name of Comoros: Siti Kassim**

**In the name of the European Community: Heidi Pihlatie**

**In the name of France: Charles Millon**

**In the name of the Islamic Republic of Iran:**

**In the name of Japan:**

**In the name of Kenya: Abu Chiaba Mohamed**

**In the name of Madagascar: Auguste Richard Paraima**

**In the name of Maldives:**

**In the name of Mauritius:**

**In the name of Mozambique: Cadmiel Filiane Mutemba**

**In the name of Namibia:**

**In the name of New Zealand: Adele Bryant**

**In the name of Republic of Korea:**

**In the name of the Russian Federation:**

**In the name of Seychelles: Callixte d'Offay**

**In the name of Somalia:**

**In the name of South Africa:**

**In the name of United Kingdom:**

**In the name of United Republic of Tanzania:**

**In the name of Yemen:**

**National Interest Analysis [2011] ATNIA 24**  
**with attachment on consultation**

**Southern Indian Ocean Fisheries Agreement**  
**(Rome, 29 December 2006)**

**[2006] ATNIF 31**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006) [2006] ATNIF 31**

#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia ratify the *Southern Indian Ocean Fisheries Agreement* (the Agreement) as soon as practicable after the tabling process is finished. The Agreement will apply to the high seas of the southern Indian Ocean outlined in its Article 3 (the Area).
2. The Agreement will enter into force 90 days after the Depositary (the Director-General of the Food and Agriculture Organization of the United Nations (FAO)) receives the fourth instrument of ratification, acceptance or approval. At least two of the four instruments received must have been deposited by coastal States adjacent to the Area.
3. The Agreement was adopted by a conference of plenipotentiaries in Rome, Italy on 7 July 2006. As at 1 August 2011, the Agreement had received ten signatures and three instruments of ratification, acceptance or approval, including two from coastal States adjacent to the Area. In addition, one participant had acceded to the Agreement. Accordingly, the Agreement will enter into force following the deposit of the next instrument of ratification, acceptance or approval. Australia signed the Agreement on 29 December 2006 and our ratification, at this stage, would bring the Agreement into force.

#### **Overview and national interest summary**

4. The Agreement establishes a means for Contracting Parties to manage and conserve non-highly migratory fishery resources in the high seas of the southern Indian Ocean. The Agreement promotes the objective of long-term conservation and sustainable use of fisheries resources in the Area, through applying principles such as the precautionary approach and an ecosystem-based approach to fisheries management. Under the Agreement, the Meeting of Parties may determine allocations of total allowable catches for each Party and adopt other conservation and management measures in pursuance of the Agreement's objective.
5. As a Contracting Party to the Agreement, Australia would be able to participate in the management of fishery resources in the Area and secure a share of these resources for the Australian fishing industry. Some of the fish stocks that will be managed on the high seas under the Agreement are likely also to occur within Australia's exclusive economic zone, making their effective and compatible management in the high seas crucial to Australia's domestic fisheries interests. Ratification of the Agreement would further enhance Australia's international reputation as a responsible fishing nation.

## **Reasons for Australia to take the proposed treaty action**

6. The Agreement will establish a cooperative management framework for Contracting Parties to effectively manage non-highly migratory fishery resources within the Area, which covers a large area of high seas in the southern Indian Ocean. These fishery resources are important to the Australian fishing industry, which has been active in the Area for over a decade. As a Contracting Party, Australia would be able to secure continued access for the Australian fishing industry to these commercially valuable fishery resources, influence the substance and standard of the management arrangements adopted under the Agreement, and endeavour to ensure that these measures are compatible with the high standards already implemented for Australian industry domestically. This would allow Australia to both safeguard the interests of industries that harvest these resources and conserve marine biodiversity.

7. In 1999-2000 orange roughy stocks were discovered in the high seas of the southern Indian Ocean. At that time, those stocks were being seriously depleted by heavy fishing resulting from a lack of cooperative management arrangements being in place between coastal and distant water fishing States. Over exploitation and depletion of fishery resources, such as orange roughy, can have severe environmental costs and impacts on the fishing industry, including the Australian fishing industry. Concern over this situation prompted Australia, together with a number of other countries and entities with an interest in the fishery resources of the southern Indian Ocean, to develop the Agreement to facilitate cooperation in managing these resources to preclude further over-exploitation.

8. Australia plays a key role internationally in promoting strengthened and effective fisheries management practices, including with respect to environmental standards for fishing on the high seas. In this regard, Australia has contributed to developing regional and international standards to prevent significant adverse impacts of fishing on vulnerable marine ecosystems. Some of the species covered by the Agreement are associated with vulnerable marine ecosystems, and the Agreement will provide a regional decision-making forum through which standards to manage the impacts of fishing on these ecosystems will be adopted and implemented.

9. The obligations under the Agreement are consistent with Australia's obligations under the *United Nations Convention on the Law of the Sea* ([1994] ATS 31 (UNCLOS)) and the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ([2001] ATS 8, UNFSA) to cooperate with other States to ensure the conservation and management of living resources in the high seas. Australia is already a Party to agreements establishing organisations with competence to manage the highly migratory fishery resources (tuna and tuna-like species) for which Australian vessels fish in the areas of high seas that overlap with or adjoin the Agreement Area. These organisations are the Western and Central Pacific Fisheries Commission, the Commission for the Conservation of Southern Bluefin Tuna, and the Indian Ocean Tuna Commission. Australia has also ratified or is seeking to ratify the agreements establishing regional bodies with competence over the non-highly migratory resources in the areas of high seas that adjoin the Agreement Area, including the Commission for the Conservation of Antarctic Marine Living Resources



(which adopts measures for Antarctic marine living resources in the area governed by the *Convention on the Conservation of Antarctic Marine Living Resources*, [1982] ATS 9) and the South Pacific Regional Fisheries Management Organisation (which will be established by the *Convention on the Conservation and Management of High Seas Resources of the South Pacific Ocean*, [2010] ATNIF 51).

10. Consistent with Article 17 of UNFSA, were Australia not to ratify the Agreement, Australian fishing vessels would not be able to fish for non-highly migratory resources in the Agreement area unless Australia agreed, as a cooperating non-Contracting Party, to apply any measures adopted for those resources by the Contracting Parties. In practice, this would mean that Australia would still be bound to give effect to all measures adopted by the Contracting Parties through the Meeting of the Parties, but would not be able to participate in the development of those measures.

11. It is important that Australia ratify this Agreement as soon as practicable. Australia was active in the negotiation of the Agreement and ratification will further enhance Australia's reputation as a responsible fishing nation and underline our commitment to effective fisheries management practices. It is necessary that Australia be among the original ratifying Parties in order to participate as a member at the first Meeting of the Parties, at which important rules and procedures will be adopted. These include decisions that will affect Australia's future participation in the Agreement, such as the rules of procedure, the financial regulations and the formula for budgetary contributions (which will govern the level of annual membership fees required from each Contracting Party).

## **Obligations**

12. The Agreement requires Contracting Parties to cooperate, in accordance with UNCLOS and international law, to ensure the long-term conservation and sustainable use of non-highly migratory fishery resources in the southern Indian Ocean and apply principles such as an ecosystem-based approach to fisheries management and the precautionary approach.

### *Conservation and management measures*

13. Australia would be obliged to promptly implement the Agreement and any conservation and management measures adopted by the Meeting of the Parties, and take appropriate action to ensure the effectiveness of such measures (Article 10(1), subparagraphs (a) and (b)). Australia would also be required to comply with all decisions of the Meeting of the Parties, which are legally binding pursuant to Article 8(3), and are likely to include:

- measures to ensure the long-term sustainability of the fishery resources (Article 6(1)(d));
- measures to promote cooperation in the research into and management of fishery resources, including with respect to compatible management for stocks that straddle adjacent areas under national jurisdiction (Article 6(1), subparagraphs (b) and (g));
- adoption of generally recommended international minimum standards for fishing (Article 6(1)(e));

- rules and procedures for monitoring, control and surveillance of fishing activity (Article 6(1)(h)); and
- measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (Article 6(1)(i)).

*Obligations to provide information*

14. Australia would be under an obligation to collect and exchange sufficient and verified scientific, technical and statistical data on fishery resources and the implementation of measures adopted under the Agreement (Article 10(1)(c)). This would include providing a statement to the Meeting of the Parties on any sanctions imposed for violations of conservation and management measures, and on measures taken by Australia for straddling stocks occurring in waters under Australian jurisdiction adjacent to the Area (Article 10(2)).

15. Australia would be obliged to maintain and share a record of Australian fishing vessels authorised to fish for fishery resources in the Area (Article 11(3)(b)). In addition, Australia would be required to collect and share complete and accurate data concerning fishing activities by Australian fishing vessels in the Area, whilst maintaining, where appropriate, the confidentiality of data as required under national legislation (Article 11(3), subparagraphs (c) and (d)).

16. Australia would also be obliged to exchange information on the activities of non-Contracting Parties' vessels fishing in the Area (Article 17(2)). Australia would be obliged to inform any non-Contracting Party of any activity undertaken by its nationals or flagged vessels which undermined the effectiveness of the Agreement (Article 17(3)).

*Flag State duties*

17. As a flag State, Australia would be obliged to take measures to ensure that Australian-flagged fishing vessels comply with the Agreement (Articles 10(3) and 11(1)(a)) and ensure that Australian vessels do not conduct unauthorised fishing within the Area or in waters under national jurisdiction adjacent to the Area (Article 11, paragraphs (1)(b) and (2)). Australia would also be required to use a satellite vessel monitoring system for Australian vessels fishing in the Area (Article 11(1)(c)), investigate alleged serious violations of the Agreement by Australian vessels and report on any action taken in response to such violations (Articles 10(4) and 11(3)(e)).

18. Australia would also be obliged to take measures, to the greatest extent possible, to ensure that its nationals and fishing vessels owned or operated by its nationals fishing in the Area comply with the Agreement and conservation and management measures adopted by the Meeting of the Parties (Article 10(3)).

*Port State duties*

19. Australia would have certain obligations in respect of vessels, including foreign vessels, in Australian ports (Article 12). As a port State, Australia would be obliged to:

- give effect to any conservation and management measures adopted by the Meeting of the Parties to inspect documents, fishing gear and catch on board fishing vessels voluntarily at Australian ports or offshore terminals (Article 12(2)(a));

- allow fishing vessels to land, tranship catch or receive supplies only if satisfied that the fish on board were caught in a manner consistent with the Agreement and measures under it (Article 12(2)(b)); and
- assist a flag state Contracting Party, if requested, to ensure compliance with the Agreement and measures under it by vessels of the flag State in Australian ports (Article 12(2)(c)).

20. If Australia considered that a fishing vessel of another Contracting Party using Australia's ports or offshore terminals had violated the Agreement, or measures under it, Australia would be required to inform the flag State concerned and the Meeting of Parties and provide full documentation of the matter (Article 12(3)).

### **Implementation**

21. Most of the obligations under the Convention can be implemented administratively or under existing Commonwealth legislation, in particular the *Fisheries Management Act 1991* (FM Act). The FM Act provides a framework for implementing obligations arising under all international fisheries management organisations and agreements to which Australia is a Party, including by:

- requiring Australian nationals and Australian-flagged vessels to comply with conservation and management measures adopted through such organisations or agreements;
- establishing offences for violations of conservation and management measures adopted through such organisations or agreements; and
- establishing powers for the conduct of surveillance and enforcement operations pursuant to such organisations or agreements.

### **Costs**

22. The entry into force of the Agreement will not impose a significant burden or cost on the Australian Government. Many obligations (including those obligations listed above to provide information) imposed by the Agreement are met through the current activities of the Australian Fisheries Management Authority (AFMA) and the Department of Agriculture, Fisheries and Forestry (DAFF).

23. The costs to Australia of becoming a Contracting Party are minimal. The Agreement does not require the establishment of a permanent secretariat and the only mandatory fiscal obligation is that Contracting Parties will make contributions to the budget (Article 5(4)). This membership contribution would form a component of the administered funding provided from the Department of Finance and Deregulation under DAFF's Program 1.13 *International Market Access*, which was established to maintain and improve international market access opportunities for Australian agriculture, fisheries and forestry industries.

24. Staff and travel costs will be incurred by the Australian Government for involvement of staff from relevant departments and agencies in preparing for and attending Meetings of the Parties. Meeting costs will be paid for by the relevant host state or regional economic integration organisation. The annual meeting will be held, where possible, alongside other regional meetings to minimise travel costs. No costs for Australia's participation will be incurred by the Australian fishing industry.

25. As the agency responsible for regulating Australian Commonwealth fisheries, including on the high seas, AFMA is likely to incur some associated costs, such as the costs incurred in implementing and enforcing measures adopted by the Cooperating Parties with respect to Australian fishing vessels licensed to fish in the Area. In line with AFMA's cost recovery impact statement, these costs will be partially attributed to industry and partially to government.

26. Compliance should not involve significant additional costs to the fishing industry, which is already required to comply with similar monitoring, control and surveillance standards for fishing operations in Australia's waters. The same compliance obligations will apply to both Australian and foreign vessels.

### **Regulation Impact Statement**

27. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

28. Amendments to the Agreement may be proposed by any Contracting Party, but must be adopted by consensus of all Contracting Parties (Article 21(2)). Amendments would enter into force 90 days after the Depositary receives instruments of ratification, acceptance or approval of such amendments from all Contracting Parties who held this status at the time the amendment was approved (Article 21(3)). Any amendments to the Agreement would be subject to Australia's domestic treaty processes.

29. The Meeting of the Parties can make decisions on fisheries conservation and management matters in accordance with its responsibilities set out in Article 6. Article 8 provides that decisions on matters of substance shall be taken by the consensus of the Contracting Parties present, while decisions on other matters shall be taken by a simple majority of Contracting Parties present and voting. Decisions adopted by the Meeting of the Parties shall be binding on all Contracting Parties.

30. Ratification, acceptance or approval of the Agreement may be made subject to reservations. Reservations will become effective only upon unanimous acceptance by all Contracting Parties. Failing such acceptance, the state or regional economic integration organization making the reservation will not become a Contracting Party to the Agreement (Article 28(1)). It is not proposed that Australia make any reservation with respect to the Agreement.

### **Withdrawal or denunciation**

31. Any Contracting Party may withdraw from the Agreement at any time after the expiry of two years from the date the Agreement entered into force for that Contracting Party. The withdrawal will become effective 90 days after written notice is received by the Depositary (Article 26).

32. Withdrawal from the Agreement would be subject to Australia's domestic treaty processes.

33. The Agreement will be automatically terminated if, as a result of withdrawals, the number of Contracting Parties drops below three (Article 27).

**Contact details**

International Fisheries Section, Fisheries Branch  
Sustainable Resource Management Division  
Department of Agriculture, Fisheries and Forestry

## ATTACHMENT ON CONSULTATION

### Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006) [2006] ATNIF 31

#### CONSULTATION

##### Commonwealth departments and agencies

- *Attorney-General's Department*
- *Australian Fisheries Management Authority*
- *Australian Bureau of Agricultural and Resource Economics and Sciences (then Bureau of Rural Sciences)*
- *Department of the Sustainability, Environment, Water, Population and Communities (then Department of the Environment and Heritage)*
- *Department of Foreign Affairs and Trade*
- *Department of the Prime Minister and Cabinet*

34. Commonwealth departments and agencies were consulted throughout the intergovernmental consultation process for the negotiation of the text for the Agreement (2002 to 2006). Interdepartmental meetings were held regularly between relevant Commonwealth departments and agencies in the development phase, and Commonwealth departments and agencies were directly involved in the development of an agreed whole-of-government Australian negotiating position. Approval of the Australian negotiating position was sought from relevant ministers prior to each Intergovernmental Consultation.

35. The Department of Agriculture, Fisheries and Forestry led Australia's delegation to the intergovernmental consultations. Officers from the Attorney-General's Department, the Australian Fisheries Management Authority, the Department of Foreign Affairs and Trade, the then Bureau of Rural Sciences and the then Department of the Environment, Water, Heritage and the Arts also participated on the Australian delegation.

36. Letters were sent on 20 June 2006 to seek the support of the Prime Minister and relevant ministers for Australia's signing of the Agreement. All agreed to Australia signing the Agreement.

##### State and Territory departments

37. The following State and Territory Departments were consulted:
- *Queensland – Queensland Fisheries Service – Department of Primary Industries*
  - *New South Wales – NSW Fisheries*
  - *Victoria – Fisheries Victoria – Department of Primary Industries*
  - *Tasmania – Fisheries – Department of Primary Industries, Parks, Water and Environment*
  - *Northern Territory – NT Fisheries*
  - *Western Australia*

### *Natural Resources Management Marine and Coastal Committee*

38. The Natural Resources Management Marine and Coastal Committee is an intergovernmental committee that advises the Natural Resources Management Standing Committee and Ministerial Council on matters of national significance relating to the conservation and ecologically sustainable development of marine and coastal ecosystems and resources.

39. States and Territories were informed of the progress of the Agreement on various occasions between 2 July 2004 and 2 February 2007 via their involvement in the Marine and Coastal Committee, under the Natural Resource Management Ministerial Committee. These discussions were conducted at meetings on 2 July 2004, 1 July 2005, 3 February 2006, 29 November 2006 and 2 February 2007.

### *Standing Committee on Treaties*

40. States and Territories were also notified about the progress of the negotiations through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). The Schedule of Treaties distributed to SCOT provided notification of the negotiation and signature of the Agreement and that the Agreement was under review prior to ratification. An out of session paper was circulated on 22 May 2006 to SCOT, providing States and Territories with the opportunity to comment on the text of the Agreement prior to Australia's signature on 29 December 2006. The comments received by States and Territories were supportive of the proposal.

41. Further information on the Agreement and its entry into force was provided to SCOT in September 2008, September 2009 and September 2010. A draft National Interest Analysis was circulated to SCOT representatives on 5 February 2009, with all responses being supportive of Australia ratifying, and comments were included in the NIA. SCOT members have also been regularly updated on the progress of the Agreement through briefings presented biannually at SCOT meetings, usually in March and September.

### **Industry members, industry groups and non-governmental organisations**

42. The following industry members, industry groups and non-governmental organisations (NGOs) were consulted:

- *Relevant commercial licence holders*
- *Commonwealth Fisheries Association*
- *Southern Indian Ocean Deepwater Fishers' Association*
- *South East Trawl Fishing Industry Association*
- *Great Australian Bight Fishing Industry Association*
- *Australian Southern Bluefin Tuna Industry Association*
- *Austral Fisheries*
- *Petuna Sealord Deepsea Fishing Pty Ltd*
- *Wildcatch Fisheries South Australia*

- *Tasmanian Seafood Industry Council*
- *Northern Territory Seafood Industry Council*
- *Western Australian Fishing Industry Council*
- *Queensland Seafood Industry Council*
- *New South Wales Seafood Industry Council*
- *New South Wales Professional Fishermen's Association*
- *Seafood Industry Victoria*
- *The Game Fishing Association of Australia*
- *Recfish Australia*
- *Deep Sea Conservation Coalition*
- *National Environmental Consultative Forum*
- *TRAFFIC*
- *Greenpeace Australia*
- *WWF Australia*

43. Conservation NGOs, the Commonwealth Fisheries Association, State and the Northern Territory industry bodies and relevant industry members were consulted throughout the process for negotiation of the Agreement. These bodies support Australia's ratification of the Agreement.

44. Consultations with industry (including relevant commercial licence holders and industry groups) began in 1999 concerning the orange roughy fishery in the southern Indian Ocean and the potential for the development of a regional fisheries management organisation in the Area. Industry representatives were invited to attend the intergovernmental consultations. Letters were sent to industry members following each intergovernmental consultation informing them of the meeting outcomes.

45. A copy of the draft text of the Agreement was sent to industry on 16 May 2006 seeking their comments. Industry responded positively to the draft text.

46. The support of industry for a regional fisheries management organisation in the southern Indian Ocean has been highlighted by the development of the industry body, the Southern Indian Ocean Deepwater Fishers' Association (SIODFA).

47. Additional letters were sent to commercial industry, recreational and game fishing organisations and NGOs on 11 June 2008 and 8 April 2011 seeking comment on the proposed ratification of the Agreement. All responses highlighted continued support for the Agreement. Some comments were not relevant to the ratification stage but will be considered during implementation of the Agreement. Continued consultation and dissemination of information will continue as progress is made.

### **General public**

48. A press release was issued by the Hon Warren Truss MP, then Minister for Agriculture, Fisheries and Forestry on 21 June 2000 to announce Australia's intention to participate in the development of the Agreement.

49. A number of articles have been published in *AFMA News* (July 2000, October 2001) to publicise Australia's participation in the international negotiations to



develop a regional fisheries management organisation for the management of non-highly migratory fish stocks in the southern Indian Ocean.

50. On 12 July 2006 the Food and Agriculture Organization website's newsroom published a summary of the opening for signature of the Agreement that had occurred the preceding week. No comments were received from the public.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

**Convention**  
**on**  
**the Conservation and Management**  
**of**  
**High Seas Fishery Resources**  
**in**  
**the South Pacific Ocean**

(Auckland, 14 November 2009)

Not yet in force  
[2010] ATNIF 51

The Contracting Parties,

*Committed* to ensuring the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and in so doing safeguarding the marine ecosystems in which the resources occur;

*Recalling* relevant international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995 and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation of the United Nations at its twenty eighth session on 31 October 1995;

*Recognising* that under international law reflected in the relevant provisions of the above agreements, States have a duty to cooperate with each other in the conservation and management of living resources in the areas of the high seas and, as appropriate, to cooperate to establish sub-regional or regional fisheries organisations or arrangements with a view to taking the measures necessary for the conservation of such resources;

*Taking* into consideration that, under international law reflected in the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, coastal States have waters under national jurisdiction within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fishery resources and conserving living marine resources upon which fishing has an impact;

*Recognising* economic and geographical considerations and the special requirements of developing States, in particular the least developed among them, and small island developing States, and territories and possessions, and their coastal communities, in relation to the conservation, management and sustainable development of fishery resources and equitable benefit from those resources;

*Noting* the need for regional fisheries management organisations and arrangements to undertake performance reviews in order to assess the

degree to which they are attaining their respective conservation and management objectives;

*Determined* to cooperate effectively to eliminate illegal, unreported and unregulated fishing and the adverse impact that it has on the state of the world fishery resources and the ecosystems in which they occur;

*Conscious* of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimise the risk of long-term or irreversible effects of fishing;

*Mindful* that effective conservation and management measures must be based on the best scientific information available and the application of the precautionary approach and an ecosystem approach to fisheries management;

*Convinced* that the long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and the protection of the marine ecosystems in which those resources occur may best be achieved by the conclusion of an international convention for that purpose;

Have agreed as follows:

## **Article 1**

### **DEFINITIONS**

1. For the purposes of this Convention:
  - (a) '1982 Convention' means the United Nations Convention on the Law of the Sea of 10 December 1982;
  - (b) '1995 Agreement' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995;
  - (c) 'Commission' means the Commission of the South Pacific Regional Fisheries Management Organisation established by Article 6;
  - (d) 'Convention Area' means the Area to which this Convention applies in accordance with Article 5;

- (e) ‘Code of Conduct’ means the Code of Conduct for Responsible Fisheries adopted by the 28th session of the Conference of the Food and Agriculture Organisation of the United Nations (FAO) on 31 October 1995;
- (f) ‘fishery resources’ means all fish within the Convention Area, including: molluscs; crustaceans; and other living marine resources as may be decided by the Commission; but excluding:
- (i) sedentary species in so far as they are subject to the national jurisdiction of coastal States pursuant to Article 77 paragraph 4 of the 1982 Convention;
  - (ii) highly migratory species listed in Annex I of the 1982 Convention;
  - (iii) anadromous and catadromous species; and
  - (iv) marine mammals, marine reptiles and sea birds;
- (g) ‘fishing’ means:
- (i) the actual or attempted searching for, catching, taking or
  - (ii) harvesting of fishery resources;
  - (iii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose;
  - (iv) transshipment and any operation at sea in support of, or in preparation for, any activity described in this definition; and
  - (v) the use of any vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition;
- but does not include any operation related to emergencies involving the health or safety of crew members or the safety of a vessel;
- (h) ‘fishing vessel’ means any vessel used or intended for fishing, including fish processing vessels, support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (i) ‘flag State’ means, unless otherwise indicated:
  - (ii) a State whose fishing vessels are entitled to fly its flag; or
  - (iii) a regional economic integration organisation in which fishing vessels are entitled to fly the flag of a member State of that regional economic integration organisation;
- (i) ‘IUU fishing’ means activities as referred to in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, and other activities as may be decided by the Commission;
- (j) ‘nationals’ includes both natural and legal persons;
- (k) ‘port’ includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or re-supplying;
- (l) ‘regional economic integration organisation’ means a regional economic integration organisation to which its member States have transferred competence over matters covered by this Convention, including the

authority to make decisions binding on its member States in respect of those matters;

- (m) 'serious violation' has the same meaning as that set out in Article 21 paragraph 11 of the 1995 Agreement and such other violations as may be specified by the Commission; and
  - (n) 'transshipment' means the unloading of all or any of the fishery resources or fishery resource products derived from fishing in the Convention Area on board a fishing vessel to another fishing vessel either at sea or in port.
- 2.
- (a) 'Contracting Party' means any State or regional economic integration organisation which has consented to be bound by this Convention and for which the Convention is in force.
  - (b) This Convention applies, *mutatis mutandis*, to any entity referred to in Article 305, paragraph 1 (c), (d) and (e), of the 1982 Convention which becomes a party to this Convention, and to that extent "Contracting Party" refers to any such entity.

## **Article 2**

### **OBJECTIVE**

The objective of this Convention is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

## **Article 3**

### **CONSERVATION AND MANAGEMENT PRINCIPLES AND APPROACHES**

1. In giving effect to the objective of this Convention and carrying out decision making under this Convention, the Contracting Parties, the Commission and subsidiary bodies established under Article 6 paragraph 2 and Article 9 paragraph 1 shall:
  - (a) apply, in particular, the following principles;
    - (i) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account best international practices;
    - (ii) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-

target and associated or dependent species and the general obligation to protect and preserve the marine environment;

- (iii) overfishing and excess fishing capacity shall be prevented or eliminated;
- (iv) full and accurate data on fishing, including information relating to impacts on the marine ecosystems in which fishery resources occur, shall be collected, verified, reported and shared in a timely and appropriate manner;
- (v) decisions shall be based on the best scientific and technical information available and the advice of all relevant subsidiary bodies;
- (vi) cooperation and coordination among Contracting Parties shall be promoted to ensure that conservation and management measures adopted by the Commission and conservation and management measures applied in respect of the same fishery resources in areas under national jurisdiction are compatible;
- (vii) marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance;
- (viii) the interests of developing States, in particular the least developed among them and small island developing States, and of territories and possessions, and the needs of developing State coastal communities, shall be recognised;
- (ix) effective compliance with conservation and management measures shall be ensured and sanctions for any violations shall be adequate in severity to discourage violations wherever they occur and in particular shall deprive offenders of the benefits accruing from their illegal activities; and
- (x) pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised; and

(b) apply the precautionary approach and an ecosystem approach in accordance with paragraph 2.

2.

(a) The precautionary approach as described in the 1995 Agreement and the Code of Conduct shall be applied widely to the conservation and management of fishery resources in order to protect those resources and to preserve the marine ecosystems in which they occur, and in particular the Contracting Parties, the Commission and subsidiary bodies shall:

- (i) be more cautious when information is uncertain, unreliable, or inadequate;
- (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and
- (iii) take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the Code of Conduct.

- (b) An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

#### **Article 4**

### **COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES**

1. The Contracting Parties recognise the need to ensure compatibility of conservation and management measures established for fishery resources that are identified as straddling areas under the national jurisdiction of a coastal State Contracting Party and the adjacent high seas of the Convention Area and acknowledge their duty to cooperate to this end.
2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of straddling fishery resources in their entirety. In developing compatible conservation and management measures for straddling fishery resources Contracting Parties shall:
  - (a) take into account the biological unity and other biological characteristics of the fishery resources and the relationships between the distribution of the resources, the fishing activities for those resources and the geographical particularities of the region concerned, including the extent to which the fishery resources occur and are fished in areas under national jurisdiction;
  - (b) take into account the respective dependence of the coastal States and the States fishing on the high seas on the fishery resources concerned; and
  - (c) ensure that such measures do not result in harmful impact on the living marine resources as a whole in the Convention Area.
3. The Commission's initial conservation and management measures shall take due account of, and not undermine the effectiveness of, existing conservation and management measures established by relevant coastal State Contracting Parties in respect of areas under national jurisdiction and by Contracting Parties in respect of their flag vessels fishing in the adjacent high seas of the Convention Area.



## Article 5

### AREA OF APPLICATION

1. Except as otherwise provided, this Convention applies to waters of the Pacific Ocean beyond areas of national jurisdiction in accordance with international law:
  - (a) east of a line extending south along the 120° meridian of east longitude from the outer limit of the national jurisdiction of Australia off the south coast of Western Australia to the intersection with the 55° parallel of south latitude; then due east along the 55° parallel of south latitude to the intersection with the 150° meridian of east longitude; then due south along the 150° meridian of east longitude to the intersection with the 60° parallel of south latitude;
  - (b) north of a line extending east along the 60° parallel of south latitude from the 150° meridian of east longitude to the intersection with the 67° 16' meridian of west longitude;
  - (c) west of a line extending north along the 67° 16' meridian of west longitude from the 60° parallel of south latitude to its intersection with the outer limit of the national jurisdiction of Chile then along the outer limits of the national jurisdictions of Chile, Peru, Ecuador and Colombia to the intersection with the 20° parallel of north latitude; and
  - (d) south of a line extending west along the 20° parallel of north latitude (but not including the national jurisdiction of Ecuador (Galapagos Islands)) to the intersection with the 150° meridian of west longitude; then due north along the 150° meridian of west longitude to its intersection with 10° parallel of north latitude, then west along the 10° parallel of north latitude to its intersection with the outer limits of the national jurisdiction of the Marshall Islands, and then generally south and around the outer limits of the national jurisdictions of Pacific States and territories, New Zealand and Australia until it connects to the commencement of the line described in paragraph (a) above.
2. The Convention shall also apply to waters of the Pacific Ocean beyond areas of national jurisdiction bounded by the 10° parallel of north latitude and the 20° parallel of south latitude and by the 135° meridian of east longitude and the 150° meridian of west longitude.

3. Where for the purpose of this Convention it is necessary to determine the position on the surface of the earth of a point, line or area, that position shall be determined by reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).
4. Nothing in this Convention shall constitute recognition of the claims or positions of any of the Contracting Parties to this Convention concerning the legal status and extent of waters and zones claimed by any such Contracting Parties.

## **Article 6**

### **THE ORGANISATION**

1. The Contracting Parties hereby agree to establish, maintain and strengthen the South Pacific Regional Fisheries Management Organisation “the Organisation”, which shall carry out its functions as set forth in this Convention in order to achieve the objective of this Convention.
2. The Organisation shall consist of:
  - (a) a Commission;
  - (b) a Scientific Committee;
  - (c) a Compliance and Technical Committee;
  - (d) an Eastern Sub-regional Management Committee;
  - (e) a Western Sub-regional Management Committee;
  - (f) a Finance and Administration Committee;
  - (g) a Secretariat,

and any other subsidiary bodies that the Commission may, from time to time, establish in accordance with Article 9 paragraph 1 to assist it in its work.

3. The Organisation shall have legal personality in accordance with international law and shall enjoy in its relations with other international organisations and in the territories of the Contracting Parties such legal capacity as may be necessary to perform its functions and achieve the objective of this Convention. The immunities and privileges which the Organisation and its officers shall enjoy in the territory of a Contracting Party shall be subject to an agreement between the Organisation and the Contracting Party including, in particular, an agreement between the Organisation and the Contracting Party hosting the Secretariat.

- 4 The Secretariat of the Organisation shall be in New Zealand or at such other place as may be decided by the Commission.

### **Article 7**

#### **THE COMMISSION**

- 1 Each Contracting Party shall be a member of the Commission and shall appoint one representative to the Commission who may be accompanied by alternative representatives, experts and advisers.
- 2 The Commission shall elect a Chairperson and a Vice-Chairperson from among the Contracting Parties, each of whom shall serve for a term of two years and shall be eligible for re-election but shall not serve for more than two terms in succession in the same capacity. The Chairperson and Vice-Chairperson shall be representatives of different Contracting Parties.
- 3 The first meeting of the Commission shall take place no later than 12 months following the entry into force of this Convention. Thereafter the Chairperson of the Commission shall convene an annual meeting, unless the Commission decides otherwise, at a time and location to be decided by the Commission. The Commission shall hold such other meetings as may be necessary to carry out its functions under this Convention.
- 4 The principle of cost effectiveness shall apply to the frequency, duration and scheduling of meetings of the Commission and its subsidiary bodies.

### **Article 8**

#### **FUNCTIONS OF THE COMMISSION**

The Commission shall, in accordance with the objective, principles and approaches, and specific provisions of this Convention, exercise the following functions:

- (a) adopt conservation and management measures to achieve the objective of this Convention, including, as appropriate, conservation and management measures for particular fish stocks;
- (b) determine the nature and extent of participation in fishing for fishery resources including, as appropriate, for particular fish stocks;

- (c) develop rules for the collection, verification, reporting, storing and dissemination of data;
- (d) promote the conduct of scientific research to improve knowledge of fishery resources and marine ecosystems in the Convention Area and of the same fishery resources in adjacent waters under national jurisdiction, and, in collaboration with the Scientific Committee, establish procedures for the conduct of fishing for fishery resources for scientific purposes in the Convention Area;
- (e) cooperate and exchange data with members of the Commission and with relevant organisations, coastal States, territories and possessions;
- (f) promote compatibility of conservation and management measures in the Convention Area, adjacent areas under national jurisdiction and adjacent areas of high seas;
- (g) develop and establish effective monitoring, control, surveillance, compliance and enforcement procedures, including non-discriminatory market-related and trade-related measures;
- (h) develop processes in accordance with international law to assess flag State performance with respect to the implementation of their obligations under this Convention and adopt proposals, if appropriate, to promote implementation of such obligations;
- (i) adopt measures to prevent, deter and eliminate IUU fishing;
- (j) develop rules for cooperating non-Contracting Party status under this Convention;
- (k) review the effectiveness of the provisions of this Convention and the conservation and management measures adopted by the Commission in meeting the objective of this Convention;
- (l) supervise the organisational, administrative, financial and other internal affairs of the Organisation, including the relations among constituent bodies;
- (m) guide the Commission's subsidiary bodies in their work;
- (n) adopt by consensus the budget of the Organisation, the financial regulations of the Organisation and any amendments thereto, and its rules of procedure, which may include procedures for taking and recording decisions intersessionally;

- (o) adopt and amend as necessary any other regulations necessary for the exercise of its functions and those of its subsidiary bodies; and
- (p) exercise any other function and take any other decisions that may be necessary for achieving the objective of this Convention.

## **Article 9**

### **SUBSIDIARY BODIES**

1. The Commission may establish other subsidiary bodies, additional to the Scientific Committee, the Compliance and Technical Committee, the Eastern Sub-regional Management Committee, the Western Sub-regional Management Committee and the Finance and Administration Committee as may be required. Such additional subsidiary bodies may be established on a permanent or temporary basis taking into account cost implications.
2. In establishing such additional subsidiary bodies the Commission shall provide specific terms of reference and methods of work, provided always that such specific terms of reference are consistent with the objective and the conservation and management principles and approaches of this Convention and with the 1982 Convention and the 1995 Agreement. Such terms of reference and methods of work may be reviewed and amended as appropriate by the Commission from time to time.
3. All subsidiary bodies shall report, advise and make recommendations to the Commission and contribute to regular reviews of the effectiveness of conservation and management measures adopted by the Commission.
4. In carrying out their functions, all subsidiary bodies shall take into consideration the relevant work of other subsidiary bodies established by the Commission, and as appropriate the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.
5. All subsidiary bodies may establish working groups. Subsidiary bodies may also seek external advice as required in accordance with any general or specific guidance provided by the Commission.
6. All subsidiary bodies shall operate under the rules of procedure of the Commission unless otherwise decided by the Commission.

## Article 10

### SCIENTIFIC COMMITTEE

1. Each member of the Commission shall be entitled to appoint one representative to the Scientific Committee who may be accompanied by alternate representatives and advisers.
  
2. The functions of the Scientific Committee shall be to:
  - (a) plan, conduct and review scientific assessments of the status of fishery resources including, in cooperation with the relevant coastal State Contracting Party or Parties, fishery resources that straddle the Convention Area and areas under national jurisdiction;
  - (b) provide advice and recommendations to the Commission and its subsidiary bodies based on such assessments including, as appropriate:
    - (i) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
    - (ii) management strategies or plans for fishery resources based on such reference points; and
    - (iii) analyses of conservation and management alternatives, such as the establishment of total allowable catch or total allowable fishing effort at different levels, that estimate the extent to which each alternative would achieve the objective or objectives of any management strategy or plan adopted, or under consideration, by the Commission;
  - c) provide advice and recommendations to the Commission and its subsidiary bodies on the impact of fishing on the marine ecosystems in the Convention Area including advice and recommendations on the identification and distribution of vulnerable marine ecosystems, the likely impacts of fishing on such vulnerable marine ecosystems and measures to prevent significant adverse impacts on them;
  - (d) encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources and the marine ecosystems in the Convention Area including knowledge in relation to fishery resources straddling the Convention Area and areas under national jurisdiction; and
  - (e) provide such other scientific advice to the Commission and its subsidiary bodies as it considers appropriate, or as may be requested by the Commission.
  
3. The rules of procedure of the Commission shall provide that where the Scientific Committee is unable to provide its advice by consensus, it shall set out in its report the different views of its members. The reports of the Scientific Committee shall be made publicly available.

4. The Commission, taking into account any recommendations from the Scientific Committee, may engage the services of scientific experts to provide information and advice on the fishery resources and marine ecosystems in the Convention Area and any related matters that may be relevant to the Commission's consideration of conservation and management measures.
5. The Commission shall make appropriate arrangements for the periodic independent peer review of the Scientific Committee's reports, advice and recommendations.

## **Article 11**

### **COMPLIANCE AND TECHNICAL COMMITTEE**

1. Each member of the Commission shall be entitled to appoint one representative to the Compliance and Technical Committee who may be accompanied by alternate representatives and advisers.
2. The functions of the Compliance and Technical Committee shall be to:
  - (a) monitor and review the implementation of, and compliance with, conservation and management measures adopted under this Convention and provide advice and recommendations to the Commission;
  - (b) provide such other information, technical advice and recommendations as it considers appropriate or as may be requested by the Commission relating to the implementation of and compliance with the provisions of this Convention and the conservation and management measures adopted, or under consideration, by the Commission; and
  - (c) review the implementation of cooperative measures for monitoring, control, and surveillance and enforcement adopted by the Commission and provide advice and recommendations to the Commission.

## **Article 12**

### **EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES**

1. The Eastern and Western Sub-regional Management Committees shall, on their own initiative or at the request of the Commission, develop and make recommendations to the Commission on conservation and management measures, in accordance with Article 20, and on participation in fishing for fishery resources, in accordance with Article 21, for the parts of the Convention Area described in Annex I. Such recommendations shall be

consistent with any measures of general application adopted by the Commission and shall require the consent of the coastal State Contracting Party or Parties concerned on the matters on which such consent is required under Article 20 paragraph 4 and Article 21 paragraph 2. Where appropriate the Committees shall make all efforts to coordinate their recommendations.

2. The Commission may by consensus amend Annex I at any time to adjust the geographic coordinates it contains. Such amendment shall take effect from the date of its adoption, or any other date specified in the amendment.
3. The Commission may decide to assign to one Sub-regional Management Committee primary responsibility for developing and making recommendations to the Commission in accordance with this Article for a specific fishery resource even if the range of that resource should extend beyond the part of the Convention Area for which that Committee has responsibilities in accordance with Annex I.
4. Each Committee shall develop its recommendations on the basis of the advice and recommendations of the Scientific Committee.
5.
  - (a) Members of the Commission situated adjacent to the part of the Convention Area for which a Committee has responsibility in accordance with this Article, or whose fishing vessels:
    - (i) are currently fishing in that area; or
    - (ii) have fished in that area within the past two years; or
    - (iii) are fishing for a specific fishery resource assigned to that Committee pursuant to paragraph 3, including in areas under national jurisdiction adjacent to the Convention Areashall be members of that Committee.
  - (b) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) that gives notice to the Secretariat of an intention to fish within two years of the notice in the part of the Convention Area for which a Committee has responsibility in accordance with this Article, shall become a member of that Committee. If the notifying member of the Commission does not fish in that part of the Convention Area within two years of the notice, it shall cease to be a member of that Committee.



- (c) Any member of the Commission that is not a member of a Committee pursuant to subparagraph (a) or (b) may send a representative to participate in the work of that Committee.
  - (d) For the purposes of this paragraph, “fishing” includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).
6. The Eastern and Western Sub-regional Management Committees shall make all efforts to adopt their recommendations to the Commission by consensus. If all efforts to reach agreement on a recommendation by consensus have been exhausted, recommendations shall be adopted by a two-thirds majority of the members of the relevant Sub-regional Management Committee. Reports to the Commission may include majority and minority views.
  7. The recommendations made in accordance with this Article will be the basis of conservation and management measures and decisions referred to in Articles 20 and 21, respectively, that shall be adopted by the Commission.
  8. Any extraordinary costs incurred for the work of either of the Sub-regional Management Committees shall be borne by the members of the relevant Committee.

### **Article 13**

#### **FINANCE AND ADMINISTRATION COMMITTEE**

1. Each member of the Commission shall be entitled to appoint one representative to the Finance and Administration Committee who may be accompanied by alternate representatives and advisers.
2. The functions of the Finance and Administration Committee shall be to advise the Commission on the budget, on the time and place of meetings of the Commission, on publications of the Commission, on matters relating to the Executive Secretary and the staff of the Secretariat and on such other financial and administrative matters as may be referred to it by the Commission.

### **Article 14**

#### **SECRETARIAT**

1. The Secretariat shall perform the functions delegated to it by the Commission.
2. The chief administrative officer of the Secretariat shall be the Executive Secretary, who shall be appointed with the approval of the Contracting Parties on such terms as they may determine.
3. Any employees of the Secretariat shall be appointed by the Executive Secretary in accordance with such staff regulations as may be determined by the Commission.
4. The Executive Secretary shall ensure the effective functioning of the Secretariat.
5. The Secretariat to be established under this Convention shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions and more specifically the availability of services under contractual arrangement.

## **Article 15**

### **BUDGET**

1. The Commission, at its first meeting, shall adopt a budget to fund the Commission and its subsidiary bodies, and shall also adopt financial regulations. All decisions on the budget and financial regulations, including decisions relating to the contributions of members of the Commission and the formula for calculating such contributions, shall be taken by consensus.
2. Each member of the Commission shall contribute to the budget. The amount of the annual contributions due from each member of the Commission shall be a combination of a variable fee based on its total catch of such fishery resources as may be specified by the Commission and a basic fee and shall take account of its economic status. For a member of the Commission whose only catch in the Convention Area is that of its territory or territories adjoining the Convention Area the economic status shall be that of the territory concerned. The Commission shall adopt and may amend a formula for the calculation of these contributions which shall be set out in the financial regulations of the Commission.
3. The Commission may request and accept financial contributions and other forms of assistance from organisations, individuals and other sources for purposes connected with the fulfilment of its functions.

4. The Executive Secretary shall submit a draft of the annual budget for the two succeeding financial years to each member of the Commission together with a schedule of contributions, not less than 60 days before the meeting of the Finance and Administration Committee where the Committee will adopt its recommendations to the Commission. In preparing the draft budget the Secretariat shall take full account of the need for cost effectiveness together with the guidance of the Commission as to the meetings of the subsidiary bodies that may be required in the budget year. Each annual meeting of the Commission shall adopt a budget for the succeeding financial year.
5. If the Commission is unable to adopt a budget, the level of contributions to the administrative budget of the Commission shall be determined in accordance with the budget for the preceding year for the purposes of meeting the administrative expenses of the Commission for the following year until such time as a new budget can be adopted by consensus.
6. Following the annual meeting of the Commission, the Executive Secretary shall notify each member of the Commission of its contribution due as calculated under the formula adopted by the Commission pursuant to paragraph 2 and as soon as possible thereafter each member of the Commission shall pay its contribution to the Organisation.
7. Contributions shall be payable in the currency of the country in which the Secretariat of the Organisation is located, except if otherwise authorised by the Commission.
8. A Contracting Party that becomes party to this Convention during the course of a financial year shall contribute in respect of that financial year a part of the contribution calculated in accordance with the provisions of this Article that is proportionate to the number of complete months remaining in the year from the date that the Convention enters into force for that Party.
9. Unless otherwise decided by the Commission, a member of the Commission that is in arrears with its payment of any monies owed to the Organisation by more than two years shall not participate in the taking of any decisions by the Commission until it has paid all monies owed by it to the Commission.
10. The financial activities of the Organisation shall be conducted in accordance with financial regulations adopted by the Commission and shall be subject to an annual audit by independent auditors appointed by the Commission.

## **Article 16**

### **DECISION MAKING**

1. As a general rule, decisions by the Commission shall be taken by consensus. For the purpose of this Article, “consensus” means the absence of any formal objection made at the time the decision was taken.
2. Except where this Convention expressly provides that a decision shall be taken by consensus, if the Chairperson considers that all efforts to reach a decision by consensus have been exhausted:
  - (a) decisions of the Commission on questions of procedure shall be taken by a majority of the members of the Commission casting affirmative or negative votes; and
  - (b) decisions on questions of substance shall be taken by a three-fourths majority of the members of the Commission casting affirmative or negative votes.
3. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance.

## **Article 17**

### **IMPLEMENTATION OF COMMISSION DECISIONS**

1. Decisions on questions of substance adopted by the Commission shall become binding on the members of the Commission in the following manner:
  - (a) the Executive Secretary shall promptly notify each decision to all members of the Commission; and
  - (b) subject to paragraph 2, the decision shall become binding upon all members of the Commission 90 days after the date of transmittal specified in the notification pursuant to subparagraph (a) “the date of notification”.
2.
  - (a) Any member of the Commission may present to the Executive Secretary an objection to a decision within 60 days of the date of notification “the objection period”. In that event the decision shall not become binding on that member of the Commission to the extent of the objection, except in accordance with paragraph 3 and Annex II.

- (b) A member of the Commission that presents an objection shall at the same time:
  - (i) specify in detail the grounds for its objection;
  - (ii) adopt alternative measures that are equivalent in effect to the decision to which it has objected and have the same date of application; and
  - (iii) advise the Executive Secretary of the terms of such alternative measures.
  
- (c) The only admissible grounds for an objection are that the decision unjustifiably discriminates in form or in fact against the member of the Commission, or is inconsistent with the provisions of this Convention or other relevant international law as reflected in the 1982 Convention or the 1995 Agreement.
  
- 3. Any member of the Commission that has objected to a decision may at any time withdraw that objection. The decision shall then become binding on that member in accordance with paragraph 1(b) or on the date of the withdrawal of the objection whichever is the later.
  
- 4. The Executive Secretary shall promptly notify all members of the Commission of:
  - (a) the receipt and withdrawal of each objection; and
  - (b) the grounds for that objection and the alternative measures adopted, or proposed to be adopted, pursuant to paragraph 2.
  
- 5
  - (a) When an objection is presented by a member of the Commission pursuant to paragraph 2, a Review Panel shall be established within 30 days after the end of the objection period. The Review Panel shall be established in accordance with the procedures in Annex II.
  
  - (b) The Executive Secretary shall promptly notify all members of the Commission of the establishment of the Review Panel.
  
  - (c) If two or more members of the Commission present objections based on the same grounds, those objections shall be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2.

- (d) If two or more members of the Commission present objections on different grounds, those objections may, with the consent of the members of the Commission concerned, be dealt with by the same Review Panel, which shall have the membership specified in Annex II paragraph 2. In the absence of such consent, objections on different grounds shall be dealt with by separate Review Panels.
- (e) Within 45 days after its establishment, the Review Panel shall transmit to the Executive Secretary its findings and recommendations on whether the grounds specified for the objection presented by the member or members of the Commission are justified and whether the alternative measures adopted are equivalent in effect to the decision to which objection has been presented.
- (f) The Executive Secretary shall promptly notify all members of the Commission of the findings and recommendations of the Review Panel. The findings and recommendations of the Review Panel shall be dealt with and have effect as set out in Annex II.

6. Nothing in this Article limits the right of a member of the Commission at any time to refer a dispute concerning the interpretation or application of this Convention for binding settlement in accordance with the provisions of this Convention relating to the settlement of disputes.

## **Article 18**

### **TRANSPARENCY**

1. The Commission shall promote transparency in decision making processes and other activities carried out under this Convention.
2. All meetings of the Commission and its subsidiary bodies shall be open to all participants and observers registered in accordance with paragraph 4 unless otherwise decided by the Commission. The Commission shall publish its reports and conservation and management measures when adopted and shall maintain a public record of all reports and conservation and management measures in force in the Convention Area.
3. The Commission shall promote transparency in the implementation of this Convention through the public dissemination of non-commercially sensitive information and, as appropriate, facilitating consultations with, and the participation of, non-governmental organisations, representatives of the fishing industry, particularly the fishing fleet, and other interested bodies and individuals.

4. Representatives of non-Contracting Parties, relevant intergovernmental organisations and non-governmental organisations, including environmental organisations and fishing industry organisations with an interest in matters pertaining to the Commission shall be afforded the opportunity to take part in the meetings of the Commission and of its subsidiary bodies, as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation and shall not be unduly restrictive in this respect. The rules of procedure shall also provide for such representatives to have timely access to all relevant information.

### **Article 19**

#### **RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES**

1. The Commission shall give full recognition to the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in relation to the conservation and management of fishery resources in the Convention Area and the sustainable use of such resources.
2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for fishery resources covered by

this Convention, the members of the Commission shall take into account the special requirements of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, in particular:

- (a) the vulnerability of such developing States and territories and possessions which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or part thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous people in such developing States Parties, and territories and possessions; and
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto such developing State Contracting Parties, and territories and possessions.

3. The members of the Commission shall cooperate either directly or through the Commission and other regional or sub-regional organisations to:

- (a) enhance the ability of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, to conserve and manage fishery resources and to develop their own fisheries for such resources;
- (b) assist developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and territories and possessions in the region, to enable them to participate in fishing for fishery resources, including facilitating access to such fishery resources consistent with Article 3 and Article 21; and
- (c) facilitate the participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and of territories and possessions in the region, in the work of the Commission and its subsidiary bodies.

4. Cooperation for the purposes set out in this Article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall, inter alia, be directed towards:



- (a) improved conservation and management of fishery resources through collection, reporting, verification, exchange and analysis of fisheries data and related information;
  - (b) stock assessment and scientific research; and
  - (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.
5. The Commission shall establish a fund to facilitate the effective participation of developing State Contracting Parties in the region, in particular the least developed among them and small island developing States, and, as appropriate, territories and possessions in the region, in the work of the Commission and its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

## **Article 20**

### **CONSERVATION AND MANAGEMENT MEASURES**

1. The conservation and management measures adopted by the Commission shall include measures to:
- (a) ensure the long-term sustainability of fishery resources and promote the objective of their responsible utilisation;
  - (b) prevent or eliminate over fishing and excess fishing capacity to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
  - (c) maintain or restore populations of non-target and associated or dependent species to above levels at which their reproduction may become seriously threatened; and
  - (d) protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems.
2. The specific conservation and management measures adopted by the Commission shall, as appropriate, include the determination of:

- (a) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
- (b) the actions to be taken if those reference points are approached or exceeded;
- (c) the nature and extent of fishing for any fishery resource including the establishment of a total allowable catch or total allowable fishing effort;
- (d) the general or specific locations in which fishing may or may not occur;
- (e) the periods in which fishing may or may not occur;
- (f) the size limits in respect of the catch which may be retained; and
- (g) the types of fishing gear, fishing technology, or fishing practices which may be used when fishing.

3. In determining a total allowable catch or total allowable fishing effort for any fishery resource under paragraph 2 (c), the Commission shall take into account the following factors:

- (a) the status and stage of development of the fishery resource;
- (b) fishing patterns of the fishery resource;
- (c) catch of the same fishery resource within areas under national jurisdiction where relevant;
- (d) an allowance for discards and any other incidental mortality;
- (e) catch of non-target and associated or dependent species and impacts on the marine ecosystems in which the fishery resource occurs;
- (f) relevant ecological and biological factors limiting the nature of fishery resources that may be harvested;
- (g) relevant environmental factors, including trophic interactions which may have an effect upon the fishery resource and non-target and associated or dependent species; and
- (h) as appropriate, relevant conservation and management measures adopted by other intergovernmental organisations.

The Commission shall regularly review the total allowable catch or total allowable fishing effort established for any fishery resource.



4.

- (a) For a fishery resource that straddles the Convention Area and an area under the national jurisdiction of a coastal State Contracting Party or Parties:
- (i) the Commission shall establish a total allowable catch or total allowable fishing effort and other conservation and management measures, as appropriate, for the Convention Area. The Commission and the coastal State Contracting Party or Parties concerned shall cooperate in the coordination of their respective conservation and management measures in accordance with Article 4 of this Convention;
  - (ii) with the express consent of the coastal State Contracting Party or Parties concerned, the Commission may establish, in accordance with Annex III of this Convention, and as appropriate, a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource; and
  - (iii) in the case where one or more of the coastal State Contracting Parties does not consent to a total allowable catch or total allowable fishing effort that will apply throughout the range of the fishery resource, the Commission may establish, as appropriate, a total allowable catch or total allowable fishing effort that will apply in the areas of national jurisdiction of the consenting coastal State Contracting Party or Parties and the Convention Area. Annex III will apply, *mutatis mutandis*, to the establishment of this total allowable catch or total allowable fishing effort by the Commission.
- (b) In cases covered by subparagraph (a) (ii) or (a) (iii), other complementary conservation and management measures may be adopted so as to ensure sustainable conservation and management of the fishery resource throughout its range. To give effect to this paragraph, such measures may be adopted, in accordance with the principles of compatibility outlined in Article 4, by the Commission for the high seas and the coastal State Contracting Party or Parties concerned for the areas under national jurisdiction; and by the Commission, with the consent of the coastal State Contracting Party or Parties concerned, for measures that will apply throughout the range of the fishery resource.
- (c) All conservation and management measures, including a total allowable catch or total allowable fishing effort, adopted by the

Commission in accordance with subparagraphs (a) (ii), (a) (iii) and (b) are without prejudice to and do not affect the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction in accordance with international law, as reflected in the relevant provisions of the 1982 Convention and the 1995 Agreement, and do not in any other respect affect the Area of application of this Convention established by Article 5.

5.

(a) The Commission shall adopt measures to be applied on an emergency basis, in accordance with Article 16, including intersessionally, if necessary, where fishing presents a serious threat to the sustainability of fishery resources or the marine ecosystem in which these fishery resources occur or when a natural phenomenon or human caused disaster has, or is likely to have, a significant adverse impact on the status of fishery resources to ensure that fishing does not exacerbate such threat or adverse impact.

(b) Measures taken on an emergency basis shall be based on the best scientific evidence available. Such measures shall be temporary and must be reconsidered for decision at the next meeting of the Commission following their adoption. The measures shall become binding on the members of the Commission in accordance with Article 17 paragraph 1. Such measures shall not be open to the objection procedure in Article 17 paragraph 2 but may be the subject of dispute settlement procedures under this Convention.

6. The conservation and management measures adopted by the Commission shall be progressively developed and integrated into management strategies or plans that set out the management objectives for each fishery resource, the reference points against which to measure progress in relation to those objectives, the indicators to be used in relation to those reference points and the measures to be taken in response to particular indicator levels.

## **Article 21**

### **PARTICIPATION IN FISHING FOR FISHERY RESOURCES**

7. When taking decisions regarding participation in fishing for any fishery resource, including the allocation of a total allowable catch or total allowable fishing effort, the Commission shall take into account the status



of the fishery resource and the existing level of fishing effort for that resource and the following criteria to the extent relevant:

- (a) historic catch and past and present fishing patterns and practices in the Convention Area;
  - (b) compliance with the conservation and management measures under this Convention;
  - (c) demonstrated capacity and willingness to exercise effective flag State control over fishing vessels;
  - (d) contribution to the conservation and management of fishery resources, including the provision of accurate data and effective monitoring, control, surveillance and enforcement;
  - (e) the fisheries development aspirations and interests of developing States in particular small island developing States and of territories and possessions in the region;
  - (f) the interests of coastal States, and in particular developing coastal States and territories and possessions, in a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
  - (g) the needs of coastal States and of territories and possessions whose economies are dependent mainly on the exploitation of and fishing for a fishery resource that straddles areas of national jurisdiction of such States, territories and possessions and the Convention Area;
  - (h) the extent to which a member of the Commission is utilising the catch for domestic consumption and the importance of the catch to its food security;
  - (i) contribution to the responsible development of new or exploratory fisheries in accordance with Article 22; and
  - (j) contribution to the conduct of scientific research with respect to fishery resources and the public dissemination of the results of such research.
2. When the Commission establishes a total allowable catch or total allowable fishing effort for any fishery resource pursuant to Article 20 paragraph 4 (a) (ii) or (iii), it may, with the express consent of the coastal State Contracting Party or Parties concerned, also take decisions regarding participation in fishing for that resource throughout its relevant range.
  3. In taking decisions under paragraph 2, the Commission shall take into account the historic catch and past and present fishing patterns and

practices throughout the relevant range of the fishery resource concerned and the criteria listed in paragraph 1(b) – (j).

5. When the consent of the coastal State Contracting Party or Parties concerned is not provided pursuant to paragraph 2:
  - (a) the Commission shall take decisions, in accordance with paragraph 1, regarding allocation of the portion of the total allowable catch or total allowable fishing effort established pursuant to Article 20 paragraph 4 (a) (i) that may be taken in the Convention Area; and
  - (b) the Commission and the coastal State Contracting Party or Parties concerned shall cooperate in accordance with Article 4.
  
6. In taking decisions under this Article, the Commission may also have regard, as appropriate, to performance with respect to other international fisheries management regimes.
  
7. The Commission shall, when appropriate, review decisions regarding participation in fishing for fishery resources, including the allocation of a total allowable catch or total allowable fishing effort, taking into account the provisions of this Article and the interests of new Contracting Parties.

## **Article 22**

### **NEW OR EXPLORATORY FISHERIES**

1. A fishery that has not been subject to fishing or has not been subject to fishing with a particular gear type or technique for ten years or more shall be opened as a fishery or opened to fishing with such gear type or technique only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery, and, as appropriate, non-target and associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities.
  
2. Such preliminary conservation and management measures, which may include requirements regarding notification of intention to fish, the establishment of a development plan, mitigation measures to prevent adverse impacts on marine ecosystems, use of particular fishing gear, the presence of observers, the collection of data, and the conduct of research or exploratory fishing, shall be consistent with the objective and the conservation and management principles and approaches of this Convention. The measures shall ensure that the new fishery resource is developed on a precautionary and gradual basis until sufficient information



is acquired to enable the Commission to adopt appropriately detailed conservation and management measures.

3. The Commission may, from time to time, adopt standard minimum conservation and management measures that are to apply in respect of some or all new fisheries prior to the commencement of fishing for such new fisheries.

### **Article 23**

#### **DATA COLLECTION, COMPILATION AND EXCHANGE**

1. To enhance the information base for the conservation and management of fishery resources, non-target and associated or dependent species and the protection of the marine ecosystems in which those resources occur; and to contribute to the elimination or reduction of IUU fishing and its negative impact on those resources, the Commission shall, taking full account of Annex I of the 1995 Agreement, develop standards, rules and procedures for, inter alia:
  - (a) the collection, verification and timely reporting to the Commission of all relevant data by members of the Commission;
  - (b) the compilation and management by the Commission of accurate and complete data to facilitate effective stock assessment and ensure that the provision of the best scientific advice is enabled;
  - (c) the security of, access to and dissemination of data while maintaining confidentiality where appropriate;
  - (d) the exchange of data among members of the Commission, and with other regional fisheries management organisations, and other relevant organisations including data concerning vessels engaged in IUU fishing, and, as appropriate, concerning the beneficial ownership of such vessels, with a view to consolidating such information into a centralised format for dissemination as appropriate;
  - (e) the facilitation of coordinated documentation and data sharing between regional fisheries management organisations, including procedures to exchange data on vessel registers, catch documentation and trade tracking schemes where applicable; and
  - (f) regular audits of Commission member compliance with data collection and exchange requirements, and for addressing any non-compliance identified in such audits.



2. The Commission shall ensure that data are publicly available concerning the number of vessels operating in the Convention Area, the status of fishery resources managed under this Convention, fishery resource assessments, research programmes in the Convention Area, and cooperative initiatives with regional and global organisations.

## **Article 24**

### **OBLIGATIONS OF MEMBERS OF THE COMMISSION**

1. Each member of the Commission shall, in respect of its fishing activities within the Convention Area:
  - (a) implement this Convention and any conservation and management measures adopted by the Commission, and take all necessary measures to ensure their effectiveness;
  - (b) cooperate in furthering the objective of this Convention;
  - (c) take all necessary measures to support efforts to prevent, deter and eliminate IUU fishing; and
  - (d) collect, verify and report scientific, technical and statistical data pertaining to fishery resources and marine ecosystems in the Convention Area in conformity with the standards, rules and procedures established by the Commission.
2. Each member of the Commission shall report to the Commission on an annual basis indicating how it has implemented the conservation and management measures and compliance and enforcement procedures adopted by the Commission. In the case of coastal State Contracting Parties, the report shall include information regarding the conservation and management measures they have taken for straddling fishery resources occurring in waters under their jurisdiction adjacent to the Convention Area in accordance with Article 20 paragraph 4 and Article 4. Such reports shall be made publicly available.
3. Without prejudice to the primacy of the responsibility of the flag State, to the greatest extent possible, each member of the Commission shall take measures and cooperate to ensure compliance by its nationals, or fishing vessels owned, operated or controlled by its nationals, with the provisions of this Convention and any conservation and management measures adopted by the Commission, and immediately investigate any alleged violation of such provisions and measures. Members of the Commission shall provide reports on the progress of the investigation to the Commission and relevant members of the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed.

4. To the extent permitted by its national laws and regulations, each member of the Commission shall establish arrangements for making available to prosecuting authorities of other members of the Commission evidence related to alleged violations of the provisions of the Convention and any conservation and management measures adopted by the Commission, including information available on the beneficial ownership of vessels flying its flag.
5. Each member of the Commission shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights recognised in this Convention in a manner which would not constitute an abuse of right.

## **Article 25**

### **FLAG STATE DUTIES**

1. Each member of the Commission shall take all necessary measures to ensure that fishing vessels flying its flag:
  - (a) comply with the provisions of this Convention and the conservation and management measures adopted by the Commission and that such vessels do not engage in any activity which undermines the effectiveness of such measures when operating in the Convention Area;
  - (b) do not conduct unauthorised fishing within waters under national jurisdiction adjacent to the Convention Area;
  - (c) carry and operate equipment sufficient to comply with vessel monitoring system standards and procedures adopted by the Commission; and
  - (d) land or tranship fishery resources caught in the Convention Area in accordance with standards and procedures adopted by the Commission.
2. No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Convention Area unless it has been authorised to do so by the appropriate authority or authorities of that member of the Commission.
3. Each member of the Commission shall:
  - (a) authorise the use of fishing vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention and in accordance with international law;

- (b) maintain a register of fishing vessels entitled to fly its flag and authorised to fish for fishery resources, and ensure that, for all such vessels, such information as may be specified by the Commission is entered in that register;
  - (c) in accordance with measures adopted by the Commission, investigate immediately and report fully on actions taken in response to any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. Reporting shall include reports on the progress of the investigation to the Commission at appropriate regular intervals, to the extent permitted by national law, as well as a final report on the outcome when the investigation is completed;
  - (d) ensure that penalties applicable for such violations are of an appropriate severity, taking into account relevant factors including the value of the catch, to secure compliance, discourage further violations and deprive offenders of the benefits accruing from their illegal activities; and
  - (e) ensure in particular that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Convention or of any conservation and management measures adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the Convention Area until it has complied with all outstanding sanctions imposed by the member of the Commission in respect of the violation.
4. Each member of the Commission is encouraged to ensure that fishing vessels flying its flag operate in the Convention Area in accordance with applicable international obligations, and with regard to relevant recommendations and guidelines, regarding safety at sea for vessels and their crews.
5. Each member of the Commission shall ensure that fishing vessels flying its flag engaged in or intending to engage in research into fishery resources comply with any procedures established by the Commission for the conduct of scientific research in the Convention Area.

## **Article 26**

### **PORT STATE DUTIES**

1. A port State Contracting Party has the right and duty to take measures, in accordance with international law, to promote the effectiveness of sub-

regional, regional and global conservation and management measures. When taking such measures, a port State Contracting Party shall not discriminate in form or in fact against the fishing vessels of any State.

2. Each member of the Commission shall:
  - (a) give effect to conservation and management measures adopted by the Commission in relation to the entry and use of its ports by fishing vessels that have engaged in fishing in the Convention Area including, inter alia, with respect to landing and transshipment of fishery resources, inspection of fishing vessels, documents, catch and gear on board, and use of port services; and
  - (b) provide assistance to flag States, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Convention and with the conservation and management measures adopted by the Commission.
3. In the event that a member of the Commission considers that a fishing vessel making use of its ports has violated a provision of this Convention or a conservation and management measure adopted by the Commission, it shall notify the flag State concerned, the Commission and other relevant States and appropriate international organisations. The member of the Commission shall provide the flag State and, as appropriate the Commission with full documentation on the matter, including any record of inspection.
4. Nothing in this Article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

## **Article 27**

### **MONITORING, COMPLIANCE AND ENFORCEMENT**

1. The Commission shall establish appropriate cooperative procedures for effective monitoring, control and surveillance of fishing and to ensure compliance with this Convention and the conservation and management measures adopted by the Commission including, inter alia:
  - (a) the establishment and maintenance of a Commission record of vessels authorised to fish in the Convention Area, the marking of vessels and fishing gear, the recording of fishing activities, and the reporting of vessel movements and activities by a satellite vessel monitoring system that shall

- be designed to ensure the integrity and security of near real time transmissions, including through the possibility of direct and simultaneous transmissions, to the Commission and flag State;
- (b) an inspection programme for Contracting Parties, both at sea and in port, including procedures for Contracting Parties to board and inspect each others' vessels in the Convention Area, and procedures for notification of inspection vessels and aircraft of Contracting Parties that may participate in the programme;
  - (c) regulation and supervision of transshipment; (d) non discriminatory market-related measures, consistent with international law, to monitor transshipment, landings, and trade to prevent, deter and eliminate IUU fishing including, where appropriate, catch documentation schemes;
  - (e) reporting on violations detected, progress and outcomes of investigations, and enforcement actions taken; and
  - (f) addressing IUU fishing activities, including by identifying vessels engaging in IUU fishing activities, and by adopting appropriate measures to prevent, deter and eliminate IUU fishing, such as the development of an IUU vessels list, so that owners and operators of vessels engaging in such activities are deprived of the benefits accruing from those activities.
2. The Commission may adopt procedures that enable measures, including trade-related measures in relation to fishery resources, to be applied by members of the Commission to any state, member of the Commission, or entity whose fishing vessels engage in fishing activities that diminish the effectiveness of, or otherwise fail to comply with, the conservation and management measures adopted by the Commission. Such measures should include a range of possible responses so that account can be taken of the reason for and degree of non-compliance and should include, as appropriate, cooperative capacity-building initiatives. Any implementation of trade-related measures by a member of the Commission shall be consistent with that member's international obligations, including its obligations under the Agreement establishing the World Trade Organisation.
3. If, within three years of the entry into force of this Convention, the Commission has not adopted at sea inspection procedures as outlined in paragraph 1 (b), or an alternative mechanism which effectively discharges the obligations of the members of the Commission under the 1995 Agreement and this Convention to ensure compliance with the conservation and management measures adopted by the Commission, Articles 21 and 22 of the 1995 Agreement shall apply among Contracting

Parties as if those Articles were part of this Convention, and boarding and inspection of fishing vessels in the Area, as well as any subsequent enforcement action, shall be conducted in accordance with Articles 21 and 22 of the 1995 Agreement and such additional practical procedures as the Commission may decide are necessary for the implementation of those Articles.

## **Article 28**

### **OBSERVER PROGRAMME**

1. The Commission shall establish an observer programme, within three years of the entry into force of this Convention or such other period as the Commission may agree, to collect verified catch and effort data, other scientific data and additional information related to the fishing activity in the Convention Area, and its impacts on the marine environment. Information collected by the observer programme shall, as appropriate, also be used to support the functions of the Commission and its subsidiary bodies, including the Compliance and Technical Committee. The observer programme shall be coordinated by the Secretariat of the Commission, and shall be organised in a flexible manner which takes into account the nature of the fishery resources and other relevant factors. In this regard, the Commission may enter into contracts for the provision of the observer programme.
2. The observer programme shall consist of independent and impartial observers that are sourced from programmes or service providers accredited by the Commission. The programme shall be coordinated, to the maximum extent possible, with other regional, sub-regional and national observer programmes.
3. The Commission shall develop the observer programme taking into account advice from the Scientific Committee and Compliance and Technical Committee. The programme shall be operated in accordance with standards, rules and procedures developed by the Commission including, inter alia:
  - (a) arrangements for the placing of observers by a member of the Commission on vessels flying the flag of another member of the Commission with the consent of that member;
  - (b) levels of coverage appropriate for different fishery resources to monitor and verify catch, effort, catch composition and other details of fishing operations;
  - (c) requirements for collection, validation and reporting of scientific data and information relevant to the implementation of the provisions of this



- Convention and the conservation and management measures adopted by the Commission; and
- (d) requirements to ensure the safety and training of observers, for observer accommodation while on board the vessel, and to ensure observers have full access to and use of all relevant facilities and equipment on board the vessel in order to perform their duties effectively.

### **Article 29**

#### **ANNUAL REPORT OF THE COMMISSION**

1. The Commission shall publish an annual report, which shall include details of decisions taken by the Commission to achieve the objective of this Convention. The report shall also provide information on actions taken by the Commission in response to any recommendations from the General Assembly of the United Nations or the FAO.
2. Copies of the report shall be publicly available and shall be provided to the Secretary-General of the United Nations and the Director-General of the FAO.

### **Article 30**

#### **REVIEWS**

1. The Commission shall review the effectiveness of the conservation and management measures adopted by the Commission in meeting the objective of this Convention and the consistency of such measures with the principles and approaches in Article 3. Such reviews may include examination of the effectiveness of the provisions of the Convention itself and shall be undertaken at least every five years.
2. The Commission shall determine the terms of reference and methodology of such reviews which shall be carried out in accordance with criteria set by the Commission which shall be guided by best international practices and shall include contributions from the subsidiary bodies as appropriate and the participation of a person or persons of recognised competence who is independent of the Commission.
3. The Commission shall take account of the recommendations arising from any such review, including through the appropriate amendment of its conservation and management measures and the mechanisms for their implementation. Any proposals for amendment to the provisions of this Convention arising from any such review shall be dealt with in accordance with Article 35.

3. The results of any such review shall be made publicly available following its submission to the Commission.

### **Article 31**

#### **COOPERATION WITH OTHER ORGANISATIONS**

1. The Commission shall cooperate, as appropriate, with other regional fisheries management organisations, the FAO, with other specialised agencies of the United Nations, and with other relevant organisations on matters of mutual interest.
2. The Commission shall take account of the conservation and management measures or recommendations adopted by other regional fisheries management organisations and other relevant intergovernmental organisations that have competency in relation to the Convention Area, or in relation to areas adjacent to the Convention Area or in respect of particular living marine resources including non-target and associated or dependent species, and that have objectives that are consistent with, and supportive of, the objective of this Convention. It shall endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures or recommendations.
3. The Commission shall seek to make suitable arrangements for consultation, cooperation and collaboration with such other organisations. In particular it shall seek to cooperate with other relevant organisations with the aim of reducing and eventually eliminating IUU fishing.

### **Article 32**

#### **NON-PARTIES**

1. Members of the Commission shall exchange information with respect to the activities of fishing vessels engaged in fishing in the Convention Area that are flying the flags of non-Contracting Parties to this Convention. Members of the Commission shall take measures, individually or collectively, consistent with this Convention and international law to deter activities of such vessels which undermine the effectiveness of conservation and management measures applicable in the Convention Area, and shall report to the Commission any action taken in response to fishing in the Convention Area by non-Contracting Parties.
2. Taking account of Articles 116 to 119 of the 1982 Convention, the members of the Commission, individually or collectively, may draw the attention of any State or fishing entity which is a non-Contracting Party to



this Convention to any activity which in the opinion of the member or members of the Commission affects the implementation of the objective of this Convention.

3. Members of the Commission shall, individually or collectively, request non-Contracting Parties to this Convention whose vessels fish in the Convention Area to become party to this Convention or to agree to cooperate fully in the implementation of conservation and management measures adopted by the Commission.
4. Members of the Commission, individually or jointly, shall seek the cooperation of any non-Contracting Party that has been identified as a relevant port State or market State to ensure compliance with the objective of this Convention.

### **Article 33**

#### **RELATION TO OTHER AGREEMENTS**

1. Nothing in this Convention shall prejudice the rights, jurisdiction and duties of Contracting Parties under relevant provisions of international law as reflected in the 1982 Convention or the 1995 Agreement.
2. This Convention shall not alter the rights and obligations of Contracting Parties that arise from other agreements compatible with this Convention and that do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

### **Article 34**

#### **SETTLEMENT OF DISPUTES**

1. Contracting Parties shall cooperate in order to prevent disputes and shall use their best endeavours to resolve any disputes by amicable means which may include, where a dispute is of a technical nature, referring the dispute to an ad hoc expert panel.
2. In any case where a dispute is not resolved through the means set out in paragraph 1, the provisions relating to the settlement of disputes set out in Part VIII of the 1995 Agreement shall apply, mutatis mutandis, to any dispute between the Contracting Parties.
3. Paragraph 2 shall not affect the status of any Contracting Party in relation to the 1995 Agreement or the 1982 Convention.

### **Article 35**

## **AMENDMENTS**

1. The text of proposed amendments must be provided to the Executive Secretary at least 90 days in advance of a Commission meeting. The Executive Secretary shall promptly circulate a copy of this text to all members of the Commission.
  
2. Such proposals for amendment to this Convention shall be adopted by the Commission by a three-fourths majority of the Contracting Parties present and casting affirmative or negative votes. Adopted amendments shall be transmitted by the Depositary to all Contracting Parties without delay.
  
3. An amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of written notification of approval by three-fourths of all Contracting Parties unless any other Contracting Party notifies the Depositary that it objects to the amendment within ninety days of the date of transmittal specified in the notification by the Depositary of such receipt, in which case the amendment shall not take effect for any Contracting Party. Any Contracting Party which has objected to an amendment may at any time withdraw that objection. If all objections to an amendment are withdrawn, the amendment shall take effect for all Contracting Parties one hundred and twenty days following the date of transmittal specified in the notification by the Depositary of receipt of the last withdrawal.
  
4. Any State, regional economic integration organisation, or other entity referred to in Article 1 paragraph 2 (b) that becomes a Contracting Party after the adoption of an amendment in accordance with paragraph 2 shall be deemed to be bound by the Convention as amended once that amendment has entered into force in accordance with paragraph 3.
  
5. The Depositary shall promptly notify all Contracting Parties of the receipt of notifications of approval of amendments, the receipt of notifications of objection or withdrawal of objections, and the entry into force of amendments.

## **Article 36**

### **SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL**

1. This Convention shall be open for signature by:
  - (a) States, the regional economic integration organisation and the other entities referred to in Article 1, paragraph 2 (b), that

- participated in the International Consultations on the Establishment of the South Pacific Regional Fisheries Management Organisation; and
- (b) any other State or any other entity referred to in Article 1, paragraph 2 (b), that has jurisdiction over waters adjacent to the Convention Area;

and shall remain open for signature for 12 months from the first day of February 2010.

2. This Convention is subject to ratification, acceptance or approval by the signatories.
3. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

### **Article 37**

#### **ACCESSION**

1. This Convention shall be open for accession, after its closure for signature, by any State, regional economic integration organisation or other entity referred to in Article 36 paragraph 1, and by any other State or any other entity referred to in Article 1 paragraph 2 (b) having an interest in fishery resources.
2. Instruments of accession shall be deposited with the Depositary.

### **Article 38**

#### **ENTRY INTO FORCE**

1. This Convention shall enter into force 30 days after the date of receipt by the Depositary of the eighth instrument of ratification, accession, acceptance or approval, which shall include ratification, accession, acceptance or approval by:
  - (a) at least three coastal States adjacent to the Convention Area, which must include representation from both the side of the Convention Area that is east of Meridian 120° West and the side of the Convention Area that is west of Meridian 120° West; and
  - (b) at least three States that are not coastal States adjacent to the Convention Area and whose fishing vessels are fishing in the Convention Area or have fished in the Convention Area.

2. If within three years of its adoption, this Convention has not entered into force in accordance with paragraph 1, it shall enter into force six months after the deposit of the tenth instrument of ratification, accession, acceptance or approval, or in accordance with paragraph 1, whichever is the earlier.
3. For each signatory which ratifies, accepts or approves this Convention after its entry into force, this Convention shall enter into force for that signatory 30 days after the deposit of its instrument of ratification, acceptance or approval.
4. For each State or regional economic integration organisation which accedes to this Convention after its entry into force, this Convention shall enter into force for that State or regional economic integration organisation 30 days after the deposit of its instrument of accession.
5. For the purposes of this Article, “fishing” includes only the activities described in Article 1 paragraph 1 (g) (i) and (ii).

### **Article 39**

#### **THE DEPOSITARY**

1. The Government of New Zealand shall be the Depositary of this Convention and any amendments thereto. The Depositary shall transmit certified copies of this Convention to all signatories and shall register this Convention with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.
2. The Depositary shall inform all signatories of and Contracting Parties to this Convention of signatures and of instruments of ratification, accession, acceptance or approval deposited under Article 36 or 37 and of the date of entry into force of the Convention and of any amendments thereto.

### **Article 40**

#### **PARTICIPATION BY TERRITORIES**

1. The Commission and its subsidiary bodies shall be open to participation, with the appropriate authorisation of the Contracting Party having responsibility for its international affairs, to territories in the region that have an interest in fishery resources.
2. The nature and extent of participation by territories shall be provided for by the Contracting Parties in separate rules of procedure of the

3. Commission, taking into account international law, the distribution of competence on matters covered by this Convention and the evolution in the capacity of such territory to exercise rights and responsibilities under this Convention. These rules of procedure shall provide territories with the right to participate fully in the work of the Commission and its subsidiary bodies, except for the right to vote or block consensus on decisions, advice or recommendations.
4. Notwithstanding paragraph 2, all such territories shall be entitled to be present and to speak at the meetings of the Commission and its subsidiary bodies. In the performance of its functions, and in taking decisions, the Commission shall take into account the interests of all participants.

#### **Article 41**

#### **WITHDRAWAL**

1. A Contracting Party may, by written notification addressed to the Depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect 1 year after the date of receipt of the notification, unless the notification specifies a later date.
2. Withdrawal from this Convention by a Contracting Party shall not affect the financial obligations of such Contracting Party incurred prior to its withdrawal becoming effective.
3. Withdrawal from this Convention by a Contracting Party shall not in any way affect the duty of such Contracting Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

#### **Article 42**

#### **TERMINATION**

This Convention shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below 4.

#### **Article 43**

#### **RESERVATIONS**

No reservations or exceptions may be made to this Convention.



#### **Article 44**

### **DECLARATIONS AND STATEMENTS**

Article 43 does not preclude a State, regional economic integration organisation or entity referred to in Article 1 paragraph 2 (b), when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonisation of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State, regional economic integration organisation or entity.

#### **Article 45**

### **ANNEXES**

The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Annexes relating thereto.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorised by their respective Governments, have signed this Convention.

DONE at Auckland the fourteenth day of November, two thousand and nine, in a single original.

OPENED FOR SIGNATURE at Wellington this first day of February, two thousand and ten.

Australia:

Belize:

Canada:

Republic of Chile:

People's Republic of China:

Republic of Colombia:

Cook Islands:

Republic of Cuba:

Kingdom of Denmark in  
respect of the Faroe Islands:

Republic of Ecuador:

European Union:

Republic of the Fiji Islands:

French Republic:

Republic of Indonesia:

Japan:

Republic of Kiribati:

Republic of Korea:

Federation of Malaysia:

Republic of the Marshall Islands:

Federated States of Micronesia:

Republic of Nauru:

New Zealand:

Niue:

Republic of Palau:

Republic of Panama:

Independent State of Papua New Guinea:

Republic of Peru:

Russian Federation:

Independent State of Samoa:



Solomon Islands:

Kingdom of Tonga:

Tuvalu:

Ukraine:

United Kingdom of Great Britain and  
Northern Ireland in respect of Pitcairn,  
Henderson, Ducie and Oeno Islands:

United States of America:

Republic of Vanuatu:

Bolivarian Republic of Venezuela:

## **Annex I**

### **PARTS OF THE CONVENTION AREA FOR WHICH THE EASTERN AND WESTERN SUB-REGIONAL MANAGEMENT COMMITTEES HAVE RESPONSIBILITIES**

1. The Eastern Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Convention Area that lies east of Meridian 120° West.
  
2. The Western Sub-regional Management Committee shall be responsible for developing and recommending to the Commission conservation and management measures for that part of the Convention Area that lies west of Meridian 120° West.

## **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*

- (a) 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.
  
- (b) 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.
  
- (c) 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*

- (a) 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.

- (b) 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.

### **Annex III**

#### **PROCEDURES FOR THE ESTABLISHMENT AND IMPLEMENTATION OF A TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT FOR A STRADDLING FISHERY RESOURCE WHEN APPLIED THROUGHOUT ITS RANGE**

1. In accordance with Articles 23 and 24, coastal State Contracting Parties and members of the Commission whose vessels fish for the straddling fishery resource in areas under national jurisdiction or on the high seas in the adjacent Convention Area shall provide all relevant scientific, technical and statistical data with respect to such fishery resources to the Commission for consideration by the Scientific Committee and, as appropriate, the Compliance and Technical Committee.
2. In accordance with Article 10, the Scientific Committee shall assess the status of the straddling fishery resource throughout its range and provide advice to the Commission and the relevant Sub-regional Management Committee on an appropriate total allowable catch or total allowable fishing effort for the resource throughout its range. Such advice should include where possible estimates of the extent to which the establishment of a total allowable catch or a total allowable fishing effort at different levels would achieve the objective or objectives of any management strategy or plan adopted by the Commission.
3. In accordance with Article 12, and on the basis of the advice of the Scientific Committee and any relevant advice of the Compliance and Technical Committee, the relevant Sub-regional Management Committee shall make recommendations to the Commission on a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and appropriate measures to ensure the total allowable catch or total allowable fishing effort is not exceeded.
4. In accordance with Articles 16 and 20, the Commission, on the basis of the recommendations and advice from the Scientific Committee and the relevant Sub-regional Management Committee and any relevant advice of the Compliance and Technical Committee, shall establish a total allowable catch or total allowable fishing effort for the fishery resource throughout its range and adopt appropriate measures to ensure that the total allowable catch or total allowable fishing effort is not exceeded.
5. In relation to the conservation and management of *Trachurus murphyi* (jack mackerel), the Commission shall, in accordance with Article 20, and as appropriate, give primary consideration to establishing a total
6. allowable catch, without prejudice to any other conservation and

management measures which it considers appropriate to adopt to ensure the conservation and sustainable use of this fishery resource.

## **Annex IV**

### **FISHING ENTITIES**

1. After the entry into force of this Convention, any fishing entity whose vessels have fished or intend to fish for fishery resources may, by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant to it. Such commitment shall become effective 30 days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Depositary. The withdrawal shall become effective 1 year after the date of its receipt, unless the notification specifies a later date.
2. Any fishing entity referred to in paragraph 1 above may by a written instrument delivered to the Depositary, express its firm commitment to abide by the terms of the Convention as it may be amended pursuant to Article 35(3). This commitment shall be effective from the dates referred to in Article 35(3) or on the date of receipt of the written communication referred to in this paragraph, whichever is later.
3. A fishing entity which has expressed its firm commitment to abide by the terms of this Convention and comply with conservation and management measures adopted pursuant to it in accordance with paragraph 1 must abide by the obligations of members of the Commission, and may participate in the work, including decision making, of the Commission in accordance with the provisions of this Convention. For the purposes of this Convention, references to the Commission or members of the Commission include such fishing entity.
4. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Convention in accordance with this Annex and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.
5. The provisions of this Annex relating to the participation of a fishing entity are only for the purposes of this Convention.

**National Interest Analysis [2011] ATNIA 23**

**with attachments on consultation**

**Convention on the Conservation and Management of High Seas Fishery Resources  
in the South Pacific Ocean**

**(Auckland, 14 November 2009)**

**[2010] ATNIF 51**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009) [2010] ATNIF 51**

#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia ratify the *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (the Convention) as soon as practicable after the tabling process is finished. The Convention will apply to the high seas of the south Pacific Ocean.
2. The Convention will enter into force 30 days after the Depositary (the Government of New Zealand) receives the eighth instrument of ratification, accession, acceptance or approval (Article 38(1)). This must include at least three coastal States adjacent to the Convention Area (including representation from both sides of the Pacific Ocean) and at least three States that are not adjacent to the Convention Area, whose fishing vessels are fishing or have fished in the Convention Area. If this is not achieved within three years of its adoption (i.e., by 14 November 2012), the Convention will enter into force six months after the deposit of the tenth instrument of ratification, accession, acceptance or approval, or in accordance with its Article 38(1), whichever is the earlier (Article 38(2)).
3. As at 1 August 2011, thirteen participants had signed the Convention and five had deposited instruments of ratification, approval or accession (two coastal States on the western side of the Pacific Ocean, and three non-coastal States). Australia signed the Convention on 16 December 2010.

#### **Overview and national interest summary**

4. The Convention will establish a Commission to manage and conserve non-highly migratory fishery resources in the high seas of the south Pacific Ocean, including by determining total allowable catches and other conservation measures, and through the application of the precautionary approach and an ecosystem-based approach to fisheries management. Contracting Parties to the Convention will be members of the Commission and thus able to influence the measures adopted by the Commission.
5. As a member of the Commission, Australia would be able to participate in the management of the fishery resources in the Convention Area, and secure participatory rights for the Australian fishing industry. Some of the fish stocks that the Commission will manage on the high seas under the Convention also occur within Australia's exclusive economic zone, making their effective and compatible management in the high

seas crucial to Australia's domestic fisheries interests. Ratification of the Convention would further enhance Australia's international reputation as a responsible fishing nation.

### **Reasons for Australia to take the proposed treaty action**

6. The Convention will establish a mechanism for the cooperative management of non-highly migratory fishery resources in the Convention Area, which covers a large area of high seas in the south Pacific Ocean. These fishery resources are important to Australia and include commercially valuable deep-water species for which the Australian fishing industry has been fishing in the Convention Area for over a decade, and for which Australia already has domestic management arrangements in place in the exclusive economic zone, such as orange roughy and alfonsino. As a member of the Commission established by the Convention, Australia would be able to secure continued access for the Australian fishing industry to the fishery resources in the Convention Area, influence the substance and standard of the management arrangements adopted under the Convention and endeavour to ensure that these measures are compatible with the high standards already implemented for the Australian industry domestically. This would allow Australia to both safeguard the interests of industries that harvest these resources, and conserve marine biodiversity in the high seas of the south Pacific Ocean.

7. Australia plays a key role internationally in promoting strengthened and effective fisheries management practices, including with respect to environmental standards for fishing on the high seas. In this regard, Australia has contributed to developing regional and international standards to prevent significant adverse impacts of fishing on vulnerable marine ecosystems. Some of the species covered by the Convention are associated with vulnerable marine ecosystems, and the Commission established by the Convention will provide a decision-making forum through which regional standards to manage the impacts of fishing on these ecosystems will be adopted and implemented.

8. The obligations under the Convention are consistent with Australia's obligations under the *United Nations Convention on the Law of the Sea* ([1994] ATS 31, UNCLOS) and the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* ([2001] ATS 8, UNFSA) to cooperate with other States to ensure the conservation and management of living resources in the high seas. Australia is already a Party to the agreements establishing organisations with competence to manage the highly migratory fishery resources (tuna and tuna-like species) for which Australian vessels fish in the areas of high seas that overlap with or adjoin the Convention Area: the Western and Central Pacific Fisheries Commission, the Commission for the Conservation of Southern Bluefin Tuna, and the Indian Ocean Tuna Commission. Australia has also ratified or is seeking to ratify the agreements establishing regional bodies with competence over the non-highly migratory resources in the areas of high seas that adjoin the Convention Area, including the Commission for the Conservation of Antarctic Marine Living Resources (which adopts measures for Antarctic marine living resources in the area governed by the



*Convention on the Conservation of Antarctic Marine Living Resources* ([1982] ATS 9) and the *Southern Indian Ocean Fisheries Agreement* ([2006] ATNIF 31).

9. Consistent with Article 17 of UNFSA, were Australia not to ratify the Convention, Australian fishing vessels would not be able to fish for non-highly migratory resources in the Convention Area unless Australia agreed to give effect to the measures adopted by the Commission for those resources. In practice, this would require Australia to become a cooperating non-Contracting Party to the Convention in accordance with any procedures adopted by the Commission under Article 8(j). As a cooperating non-Contracting Party, Australia would still be bound to give effect to all measures determined by the Contracting Parties through the Commission, but would not be able to participate in the development of such measures.

10. It is important that Australia ratify the Convention as soon as practicable. Australia, together with New Zealand and Chile, instigated, co-sponsored and played a lead role in the international consultations through which the Convention was negotiated. Australia also hosted two of the eight meetings of the international consultations, and provided financial contributions to support the work of the Interim Secretariat established by those consultations. For Australia to be among the original ratifying Parties would further enhance Australia's reputation as a responsible fishing nation and underline our commitment to effective fisheries management practices.

11. In addition, it is necessary that Australia be among the original ratifying Parties in order to participate as a member at the first meeting of the Commission, which will take place no later than 12 months following the entry into force of the Convention. The first meeting of the Commission will adopt important rules and procedures governing its future operation. These include decisions that will affect Australia's future participation in the Commission, such as the rules of procedure, the financial regulations and the formula for budgetary contributions (which will govern the level of annual membership fees required from each Contracting Party).

## **Obligations**

12. The Convention requires Contracting Parties to cooperate in furthering the objective of the Convention (Article 24(1)(b)), which is to ensure the long-term conservation and sustainable use of non-highly migratory fishery resources in the Convention Area, through the application of the precautionary approach and an ecosystem-based approach to fisheries management (Article 2). As a Contracting Party, Australia would be bound to comply with a range of obligations relating to the conservation and management of these resources, and related administrative requirements.

### *Conservation and management measures*

13. Australia would be obliged to promptly implement the requirements of the Convention and conservation and management measures adopted by the Commission (Article 24(1)(a)). Decisions adopted by the Commission would be binding on Australia pursuant to Article 17(1), and would include:

- measures to determine the nature and extent of participation in fishing (Article 8(b));
- measures to promote and establish procedures for the conduct of scientific research with respect to fishery resources in the Convention Area (Article 8(d));
- procedures for the collection, exchange and use of data and information (Article 8, paragraphs (c) and (e));
- measures to promote compatibility between conservation and management measures in the Convention Area and in adjacent areas (including areas under national jurisdiction) (Article 8(f));
- procedures for monitoring, control and surveillance (Article 8(g)), including high seas boarding and inspection procedures (Article 27, paragraphs (1)(b) and (3)) and an observer programme (Article 28); and
- measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (Article 8(i)).

#### *Obligations to provide information*

14. Australia would be required to collect, verify and report a range of information, in accordance with the standards, rules and procedures adopted by the Commission. This would include:

- scientific, technical and statistical data on fishery resources and marine ecosystems in the Convention Area (Article 24(1)(d));
- an annual report on the implementation of measures adopted under the Convention, including information on measures taken by Australia for straddling stocks occurring in waters under Australian jurisdiction adjacent to the Convention Area (Article 24(2)); and
- reports on the progress of any investigations into alleged violations of conservation and management measures adopted by the Commission by Australian nationals or fishing vessels owned, operated or controlled by Australian nationals (Article 24(3) and 25(3)(c)).

#### *Flag State duties*

15. As a flag State, Australia would be obliged to take a range of measures to ensure that Australian-flagged fishing vessels comply with the Convention and the conservation and management measures adopted by the Commission (Article 25(1)). In addition to maintaining a register of authorised vessels and ensuring that Australian vessels did not conduct unauthorised fishing within the Convention Area (Article 25(2) and (3)(b)), Australia would be required to investigate and report on actions taken in response to alleged violations of the Convention by Australian vessels, and ensure that penalties for such violations were of appropriate severity (Article 25(3)(d)).

#### *Port State duties*

16. As a port State, Australia would also have certain obligations to give effect to conservation and management measures adopted by the Commission in relation to vessels that have engaged in fishing in the Convention Area entering or using its ports. This would include:

- giving effect to measures with respect to: landing and transshipment of fishery resources; inspection of fishing vessels, documents, catch and gear on board; and use of port services (Article 26(2)(a)); and
- assisting flag States whose vessels are in an Australian port to ensure compliance by those vessels with the Convention and measures adopted under it, in accordance with Australian law (Article 26(2)(b)).

17. If Australia were to consider that a foreign fishing vessel using Australia's ports or offshore terminals had violated the Convention, or measures under it, Australia would be obliged to inform the flag State concerned and the Commission and provide full documentation of the matter (Article 26(3)).

### **Implementation**

18. Most of the obligations under the Convention can be implemented administratively or under existing Commonwealth legislation, in particular the *Fisheries Management Act 1991* (FM Act). The FM Act provides a framework for implementing obligations arising under all international fisheries management organisations and agreements to which Australia is a Party, including by:

- requiring Australian nationals and Australian-flagged vessels to comply with conservation and management measures adopted through such organisations or agreements;
- establishing offences for violations of conservation and management measures adopted through such organisations or agreements; and
- establishing powers for the conduct of surveillance and enforcement operations pursuant to such organisations or agreements.

### **Costs**

19. The entry into force of the Convention will not impose a significant burden or cost on the Australian Government. Many obligations imposed by the Convention are met through the current activities of the Australian Fisheries Management Authority (AFMA) and the Department of Agriculture, Fisheries and Forestry (DAFF).

20. As a Contracting Party, Australia would be required to make annual contributions to a budget to fund the Commission and its subsidiary bodies (Article 15(2)). The budget and the formula by which budgetary contributions are calculated will be decided by consensus at the first meeting of the Commission (Article 15(1)). Australia's annual contribution would form a component of the administered funding provided from the Department of Finance and Deregulation under DAFF's Program 1.13 *International Market Access*, which was established to maintain and improve international market access opportunities for Australian agriculture, fisheries and forestry industries.

21. Staff and travel costs will be incurred by the Australian Government for involvement of staff from relevant departments and agencies in preparing for and attending meetings of the Commission and its subsidiary bodies. Attendance of

22. As the agency responsible for regulating Australian Commonwealth fisheries, including on the high seas, AFMA is likely to incur some associated costs, such as the costs incurred in implementing and enforcing measures adopted by the Commission with respect to Australian fishing vessels licensed to fish in the Convention Area. In line with AFMA's cost recovery impact statement, these costs will be partially attributed to industry and partially to government.

23. Compliance should not involve significant additional costs to the fishing industry, which is already required to comply with similar monitoring, control and surveillance standards for fishing operations in Australia's waters. The same compliance obligations will apply to both Australian and foreign vessels.

### **Regulation Impact Statement**

24. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirmed that a Regulation Impact Statement is not required.

### **Future treaty action**

25. The text of proposed amendments to the Convention must be adopted at a meeting of the Commission by a three-fourths majority of the Contracting Parties present and casting affirmative or negative votes (Article 35(2)). Amendments would enter into force for all Contracting Parties 120 days after the date on which the Depositary notifies Contracting Parties that three-fourths of all Contracting Parties have approved the amendment in writing. However, if any other Contracting Party notifies the Depositary that it objects to the amendment within 90 days of this date, the amendment shall not take effect for any Contracting Party (Article 35(3)).

26. Any amendments to the Convention would be subject to Australia's domestic treaty processes.

27. The Commission may adopt decisions in respect of conservation and management measures set out in Article 8 of the Convention. As a general rule, decisions of the Commission are to be taken by consensus (Article 16). Article 17 of the Convention provides that decisions on questions of substance adopted by the Commission shall become binding on members of the Commission 90 days after the Executive Secretary of the Commission notifies members of the decision. However, these decisions will not require future treaty action. If a member of the commission presents an objection to a decision within 60 days of the date of notification, the decision shall not become binding on that member to the extent of its objection.

28. No reservations or exceptions may be made to the Convention (Article 43).

### **Withdrawal or denunciation**

29. Any Contracting Party may withdraw from the Convention by providing written notification to the Depositary. The withdrawal will become effective one year after written notice is received by the Depositary unless the notification specifies a later date (Article 41(1)). Withdrawal shall not affect financial obligations incurred prior to the withdrawal becoming effective (Article 41(2)).

30. Withdrawal from the Convention would be subject to domestic treaty processes.

31. The Convention will be automatically terminated if, as a result of withdrawals, the number of Contracting Parties drops below four (Article 42).

### **Contact details**

International Fisheries Section  
Sustainable Resource Management Division  
Department of Agriculture, Fisheries and Forestry

## ATTACHMENT ON CONSULTATION

### **Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009) [2010] ATNIF 51**

#### CONSULTATION

##### **Commonwealth departments and agencies**

- *Attorney-General's Department*
- *Australian Fisheries Management Authority*
- *Australian Bureaus of Agricultural and Resources Economics and Sciences*
- *Department of Sustainability, Environment, Water, Population and Communities*
- *Department of Foreign Affairs and Trade*
- *Department of the Prime Minister and Cabinet*
- *Department of Finance and Deregulation*

32. Commonwealth departments and agencies were consulted throughout the intergovernmental consultations through which the text of the Convention was negotiated (2006 to 2009). Interdepartmental meetings were held regularly between the relevant Commonwealth departments and agencies over the four years of the intergovernmental consultations, and Commonwealth departments and agencies were directly involved in the development of an agreed whole-of-government Australian negotiating position. The final text of the Convention is consistent with Australia's negotiating position at the international consultations.

33. The Department of Agriculture, Fisheries and Forestry led the Australian Government delegation to the intergovernmental consultations. Officers from the Attorney-General's Department, the Australian Fisheries Management Authority, the Australian Bureau of Agricultural and Resources Economics and Sciences, the Department of Foreign Affairs and Trade and the then Department of the Environment, Water, Heritage and the Arts also participated on the Australian delegation.

34. Australia signed the Convention on 16 December 2010. Approval for Australia to sign the Convention was obtained from the Prime Minister, the Minister for Agriculture, Fisheries and Forestry, the Minister for Foreign Affairs, the Attorney-General, the Minister for Finance and Deregulation and the Minister for Sustainability, Environment, Water, Population and Communities.

## **State and Territory departments**

35. The following State and Territory Departments were consulted:

*Queensland – Queensland Fisheries Service – Department of Primary Industries*

*New South Wales – NSW Fisheries*

*Victoria – Fisheries Victoria – Department of Primary Industries*

*Tasmania – Fisheries – Department of Primary Industries, Parks, Water and Environment*

*Northern Territory – NT Fisheries*

*Western Australia – Department of Fisheries*

*Natural Resources Management Marine and Coastal Committee*

36. The Natural Resources Management Marine and Coastal Committee is a domestic intergovernmental committee that advises the Natural Resources Management Standing Committee and Ministerial Council on matters of national significance relating to the conservation and ecologically sustainable development of marine and coastal ecosystems and resources.

37. States and Territories were informed of the progress of the Convention on various occasions between February 2006 and February 2011 via briefings provided through the Marine and Coastal Committee, under the Natural Resource Management Ministerial Committee. These discussions were conducted at meetings on 3 February 2006, 27 July 2006, 2 February 2007, 13 July 2007, 1 February 2008, 25 July 2008, 3 December 2009, 17 May 2010, 17 November 2010 and 15 February 2011.

*Standing Committee on Treaties*

38. States and Territories were also notified about the progress of the Convention through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). SCOT members were regularly updated on the progress of the Convention through briefings presented biannually at SCOT meetings, usually in March and September. The Schedule of Treaties distributed to SCOT also provided notification of the negotiation and signature of the Convention, and notification that the Convention was under review prior to ratification.

39. An out of session paper was circulated to SCOT on 10 June 2011, providing states and territories with the opportunity to comment on the text of the Convention prior to tabling at JSCOT. All SCOT members were supportive of Australia's proposal to ratify the Convention.

## **Industry members, industry groups and non-governmental organisations**

40. The following industry members, industry groups and non-governmental organisations (NGOs) were consulted:

*Commercial licence holders from the relevant fisheries*  
*Commonwealth Fisheries Association*  
*Southern Indian Ocean Deepwater Fishers' Association*  
*South East Trawl Fishing Industry Association*  
*Great Australian Bight Fishing Industry Association*  
*Australian Southern Bluefin Tuna Industry Association*  
*Austral Fisheries*  
*Petuna Sealord Deepsea Fishing Pty Ltd*  
*Wildcatch Fisheries South Australia*  
*Tasmanian Seafood Industry Council*  
*Northern Territory Seafood Industry Council*  
*Western Australian Fishing Industry Council*  
*Queensland Seafood Industry Council*  
*New South Wales Seafood Industry Council*  
*New South Wales Professional Fishermen's Association*  
*Seafood Industry Victoria*  
*The Game Fishing Association of Australia*  
*Recfish Australia*  
*Deep Sea Conservation Coalition*  
*National Environmental Consultative Forum*  
**TRAFFIC**  
*Greenpeace Australia*  
*WWF Australia*

41. Conservation NGOs, the Commonwealth Fisheries Association, State and the Northern Territory industry bodies and relevant industry members were consulted throughout the process for negotiation of the Convention. These bodies support Australia's ratification of the Convention.

42. Consultations with stakeholders began in 2006 concerning the impact of bottom fishing on the deep ocean environment in the south Pacific Ocean and the potential for the development of a regional fisheries management organisation in the area.

43. Representatives from stakeholder groups were invited to attend the intergovernmental consultations, and stakeholder consultation was conducted as a part of the Australian Government preparation for the intergovernmental consultations. Letters were sent to stakeholders following meetings of the intergovernmental consultations, informing them of the meeting outcomes. Stakeholders were also invited to attend the meetings as a part of the Australian delegation (some key NGOs participated on the Australian delegation to the third and fourth meetings of the intergovernmental consultations in May and September 2007).

44. A letter with a copy of the Convention text was sent to stakeholders, including industry, recreational and game fishers and NGOs, on 8 April 2011 seeking comment on the proposed ratification of the Convention.



45. All responses highlighted continued support for the Convention. Some comments were not relevant to the ratification stage but will be considered during implementation of the Convention. Continued consultation and dissemination of information will continue as progress is made.

### **General Public**

46. A press release issued by then Minister for Environment and Heritage, Senator the Hon Ian Campbell, on 26 November 2004 identified Australia's intention to implement greater protection for deep sea marine habitats, including seamounts, from the impacts of bottom fishing. This was followed by a press release issued by former Minister for Foreign Affairs, the Hon Alexander Downer MP, the former Minister for Environment and Heritage, Senator the Hon Ian Campbell, and former Minister for Fisheries Forestry and Conservation, Senator the Hon Eric Abetz, on 22 September 2006 to reiterate Australia's position on bottom fishing and the intention to continue to participate in the development of a multilateral agreement to provide greater governance arrangements for the south Pacific Ocean.

47. A number of articles have been published in AFMA News (July 2006, October 2010) to publicise Australia's participation in the international negotiations to develop a regional fisheries management organisation for the management of non-highly migratory fish stocks in the south Pacific Ocean. There has been no response to the published articles from the Australian public.