



Australian Government
Department of Agriculture,
Fisheries and Forestry

AUSTRALIAN NATIONAL PLAN OF ACTION



**To Prevent, Deter and
Eliminate Illegal,
Unreported and
Unregulated Fishing**

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FOREWORD



*Senator the Hon Ian Macdonald,
Minister for Fisheries, Forestry and Conservation*

Australia is justifiably proud of its global leadership in seeking to combat illegal, unreported and unregulated (IUU) fishing. Several of our own important fish stocks are at risk from the increasingly sophisticated activities of national and international criminal groups and syndicates. We will continue to call the whole international community to account, especially rogue flag States who blatantly ignore their responsibilities under international law and turn a blind eye to IUU fishing by fishers flying their flags, in order to focus attention on fish piracy and to seek support for effective remedies.

In our own coastal waters valuable fish species, particularly abalone and rock lobster, suffer from over-quota fishing as well as poaching by unlicensed, illegal operators. Australia's national, state and territory jurisdictions are all strongly committed to combat IUU fishing.

The damage from IUU fishing is not only to the fish stocks, but also to many related and associated species and to the aquatic and littoral ecology. In many developing countries, including the Pacific Island States with which Australia has special relationships, community well-being is seriously threatened by IUU fishing. Australia will continue to assist developing countries to address IUU fishing in their own waters and the adjacent high seas.

Effective implementation of the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU) by all countries through national plans of action is essential. This Australian National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (AUS-NPOA-IUU) is Australia's initial response. It is, and will remain, a work-in-progress. Ongoing revisions will reflect our commitment to refine and improve existing measures, as well as utilise new measures to combat IUU fishing.

The AUS-NPOA-IUU is a compilation of measures already in place in Australia to combat IUU fishing and additional measures whose implementation will strengthen the 'war on IUU fishers'. The national plan is intentionally ambitious in seeking improved mechanisms, reflecting Australia's determination to address this serious problem with all available means.

Many of the measures Australia is implementing or is seeking to implement require the cooperation and agreement of other countries, some through bilateral agreements or arrangements and others through multilateral endorsement by members of the regional

fisheries management organisations to which Australia belongs. We will use every opportunity to persuade our international neighbours and regional partners of the importance of strengthening joint action against IUU fishing.

Some of the measures in the AUS-NPOA-IUU, for example seeking to identify and take effective action against the real beneficiaries of IUU fishing who currently hide behind complex corporate veils and shady flag-of-convenience arrangements, will be exceedingly difficult to implement. Nothing less than a broad international commitment to pierce this veil will succeed. Lessons learned in other areas of international corporate ‘crime-fighting’ – in drugs, terrorism, prostitution, arms sales and the like – may assist our efforts, provided the whole international community is willing to work together.

Globally, too, through the Food and Agriculture Organisation of the United Nations, the International Maritime Organisation, the Organisation for Economic Cooperation and Development, the International Monitoring, Control and Surveillance Network for Fisheries-Related Activities and the Ministerially-led task force on IUU fishing on the high seas, Australia will seek to strengthen and accelerate actions to address all aspects of IUU Fishing.

The AUS-NPOA-IUU closely follows the structure and measures of the IPOA-IUU. Its development has benefited greatly from the comments and suggestions of many stakeholders in the fishing industry, relevant non-governmental organisations, state and territory fisheries agencies and national government departments and agencies. I am pleased to commend this national plan of action to all in Australia and beyond who share the Australian Government’s determination to combat IUU fishing.

Senator the Hon Ian Macdonald,

Minister for Fisheries, Forestry and Conservation



EXECUTIVE SUMMARY

IUU fishing seriously damages fish stocks, associated species and the marine environment in waters of national jurisdiction and on the high seas. The IPOA-IUU calls on all States to take effective measures globally, regionally and nationally to combat IUU fishing. Australia played a leading role in the development and adoption of the IPOA-IUU by the Food and Agriculture Organisation of the United Nations (FAO).

Effective implementation of the *voluntary* IPOA-IUU through *binding* commitments applicable in waters of national jurisdiction and on the high seas is possible only if States enact appropriate domestic laws and if regional fisheries management organisations (RFMOs) adopt binding fishery conservation and management measures to that effect.

This AUS-NPOA-IUU is Australia's initial National Plan of Action to Prevent, Deter and Eliminate IUU Fishing. It has been developed through extensive consultation with relevant stakeholders in Australia, including state and territory government fisheries agencies, national government departments and agencies, fishing industry representatives, and non-governmental organisations concerned about the conservation and sustainable management of fisheries and the preservation and protection of related species and biodiversity.

After an introduction that outlines the significance of IUU fishing for Australia and Australia's role in addressing the issue internationally, the AUS-NPOA-IUU follows the structure of the IPOA-IUU and deals essentially with every provision paragraph by paragraph. The AUS-NPOA-IUU also outlines actions in all Australian jurisdictions to fish responsibly and combat IUU fishing, since around 80 per cent by value of Australian fish production derives from state and territory managed fisheries. Where state and territory actions relate closely to specific paragraphs of the IPOA-IUU, they are included in the relevant sections of the national plan of action. Other important measures by the states and territories are outlined in *Annex 4*.

Internationally, Australia is party to the major global and regional fisheries-related conventions and treaties, participates fully in the Committee on Fisheries of FAO and implements the *FAO Code of Conduct for Responsible Fisheries* and related instruments. New measures to be implemented include formal endorsement of the NPOA-Seabirds, finalisation of several new fishery plans of management and negotiation of new high seas fishery agreements as new and currently unregulated fisheries emerge.

Australian jurisdictions have comprehensive fisheries laws in place and are committed to amend them as new regulatory needs are identified. Implementing stronger and more effective measures to combat (internal) cross-border fisheries crime is a particular priority for all jurisdictions. In New South Wales, a review of crime in fisheries is expected to result in major improvements in fisheries regulation and compliance.

Existing Australian regulations control Australian nationals beyond the Australian fishing zone (AFZ) in some specific areas and fisheries. The AUS-NPOA-IUU proposes these provisions be reviewed periodically and, if appropriate, be extended to other fisheries and regions as a mechanism to combat IUU fishing by Australian persons and companies.

Effective monitoring, control and surveillance (MCS) is the key to responsible fisheries conservation and management and to combating IUU fishing in all jurisdictions and RFMOs. Paragraphs 44–52 of the AUS-NPOA-IUU describe current MCS operations and outline some further proposals to enhance MCS domestically and in relevant RFMOs, including strengthening at-sea boarding and inspection, extending states' MCS to the unlicensed (non-commercial) sector, removing cross-border impediments to effective MCS and a national study of organised crime in fisheries in Australia.

The AUS-NPOA-IUU also calls for ongoing review of applicable fisheries law, both domestic and regional, to better combat IUU fishing. The reviews should also seek to ensure cross-jurisdictional fisheries management arrangements operate effectively.

Effective bilateral cooperation with neighbouring countries on responsible fisheries management is crucial to addressing IUU fishing in waters adjacent to Australia. Special attention is given to Australia's work with like-minded countries such as France for the sub-Antarctic and Papua New Guinea (PNG) for the Torres Strait. Bilateral cooperation with Indonesia in relation to tuna shared fish stocks and cooperation with FAO under the reporting provisions of the *FAO Compliance Agreement* are also outlined. The AUS-NPOA-IUU proposes that Australia maintains its leadership on addressing IUU fishing in international forums and strengthens its joint cooperation on fisheries enforcement in the sub-Antarctic, with PNG and other Pacific Island States and in relevant RFMOs. *Annexes 5–7* provide further details of cooperative action in combating IUU fishing, including in the Pacific Ocean region.

Examples of Australia's approach to publicising IUU fishing issues and the successful prosecution of IUU fishers are set out in paragraphs 65–68 and Australia's national and regional commitment to ensuring the deployment of appropriate technical resources, including by assisting developing countries in the Asia-Pacific region, are described in paragraph 69.

As central elements of the AUS-NPOA-IUU, paragraphs 70–87 address flag State responsibilities – the *sine qua non* of international fisheries law, yet whose wanton and persistent violation by many States (though certainly not by Australia) is *the* primary source of IUU fishing. The key issues discussed relate to fishing vessel registration, fishing vessel records and fishing authorisations. Factors which tend to exacerbate IUU fishing include inconsistencies between the regulation of fishing vessels as *ships* in shipping registration legislation and as *fishing vessels* in fisheries law, the lack of effective statutory limits or prohibitions on vessels 'flag-hopping' to avoid being subject to responsible and effective maritime and fishery regulations, the focus in Australian fisheries law on regulating '*persons*' (primarily holders of fishing concessions) rather than *vessels* and some imprecision in the application of Australian law to some categories of Australian flagged fishing vessels when they fish in waters beyond Australia's normal jurisdiction.

These flag State factors are not currently such as to give concern for Australia regarding its own fisheries or the regulation of Australian flagged vessels. However, they may be of concern in the future as Australian flagged fishing vessels and Australian nationals fish more intensively on the high seas and in the waters, including those of other coastal States, of the Western and central Pacific. Accordingly, further actions proposed in the AUS-NPOA-IUU include:

- amending shipping registration laws to assist in the prevention of ‘flag-hopping’;
- strengthening working arrangements between Australia’s maritime and fisheries administrations;
- amending fisheries law to more clearly link the grant to a concession-holder of an authorisation to fish to conditions consistent with the IPOA-IUU in relation to the use of an authorised fishing vessel;
- reviewing the special provisions concerning certain Indonesian fishing vessels in the ‘MoU Box’ in the AFZ adjacent to Indonesia;
- requiring under Australian law that Australian flagged fishing vessels operating in the waters of another coastal State be authorised by both Australia and the coastal State to fish there and that they fish in accordance with the laws of the coastal State; and
- considering requiring any foreign flagged fishing vessel that fishes in Australian waters to be authorised so to fish by both Australia and the relevant flag State.

Port State measures specifically directed at fisheries compliance can contribute to the elimination of IUU fishing. However, port State measures to date have focused primarily on *vessel safety* – including through regional memoranda of understanding (MoUs). Australia will continue to work with the international community for strengthened port State measures for fisheries conservation and management. Domestically, Australia allows foreign fishing vessels into its ports and the landing of catch from such vessels only with explicit approval. In order to strengthen its port State measures regarding the prevention of IUU fishing, Australia is currently reviewing its rules and procedures for port access and the landing of catch.

Since IUU fishers aim to deliver product to major markets, measures designed to ensure only legally taken catch reaches those markets can play a significant role in combating IUU fishing. Australia is already participating in many such measures, particularly through the catch documentation and trade information schemes of the RFMOs to which it belongs. Together with like-minded members of these RFMOs, Australia will continue to work to strengthen measures to prevent trade in fish or fish products taken by IUU fishers.

Fish generally reaches markets in other than whole fish forms and research into more effective ways of identifying fish species from samples of processed products can lead to stronger measures against trade in IUU fish and fish products. Australia is undertaking such work, primarily based on forms of genetic fingerprinting. Other areas of Australian research include benchmarking best practice across jurisdictions in fisheries compliance programs and, for combating IUU fishing of native fish in inland waters, the development of new ideas on improving fisheries enforcement through the sharing of intelligence, technology and innovation in legislation.

As already indicated, RFMOs play crucial roles in regional fisheries management and have been working to strengthen conservation and management measures to combat IUU fishing. Australia has, with like-minded members, led efforts in the RFMOs to which it belongs – particularly CCAMLR, CCSBT, IOTC and the newly formed WCPFC – to strengthen measures against IUU fishers. Some success has been achieved, such as bringing non-members within the membership and/or compliance regimes of the RFMOs and persuading port and market States to cooperate in implementing complementary measures. In other cases, however, difficulties have been encountered, due substantially to consensus based decision-making rules in many RFMOs, which enable non-cooperative RFMO members to veto new measures.

Australia will continue to seek ways to ensure RFMO decision-making does not prevent effective action against IUU fishing and will cooperate with RFMOs to which it does not belong to ensure no Australian national or Australian flagged fishing vessel fishes in contravention of RFMO conservation and management measures. Australia will work to enable all States and fishing entities with a real interest in each regional fishery to participate on equitable terms in those fisheries and will seek to enhance fisheries conservation and management measures in CCAMLR and the IOTC, including in relation to developing lists of responsible fishing vessels and to strengthening observer programs.

As a developed country within the Asia-Pacific region, Australia implements comprehensive official development assistance programs with the region's developing countries, including for the better conservation and management of their fish stocks. In particular, Australia is a major donor contributor to fisheries management programs through the Forum Fisheries Agency and the Oceanic Fisheries Program within the Pacific Community. *Annex 7* outlines this work.

This AUS-NPOA-IUU has identified the clear need for all Australian jurisdictions to cooperate in combating IUU fishing through cross-border operations, the sharing of fisheries-related intelligence and other information, joint research on fisheries compliance and the adoption of uniform processes and procedures. These requirements will continue to call for the provision of adequate and appropriate resources – financial and technical – in the ever more complex tasks of preventing, deterring and eliminating IUU fishing.

I. Introduction

1. This document contains Australia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (AUS-NPOA-IUU), which has been developed in accordance with paragraph 25 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) of the Committee on Fisheries (COFI) of the Food and Agriculture Organisation of the United Nations (FAO).
2. Australian fisheries have been and continue to be adversely affected by illegal, unreported and unregulated (IUU) fishing and Australia played a leading role in the development of the IPOA-IUU: first by successfully proposing the IPOA's development to COFI in 1999 and then by contributing financially (with Canada and the European Commission) to preparatory activities leading to its adoption in 2001. These activities included seconding a fisheries expert to the Fisheries Department of FAO for six months in 1999–2000 and hosting an Expert Consultation in Sydney in May 2000, which developed a preliminary draft text for the plan of action. That text formed the basis for negotiations at Technical Consultations in Rome in October 2000 and February 2001. The IPOA-IUU was adopted by COFI on 2 March 2001 and endorsed by the FAO Council on 23 June 2001. The text of the IPOA-IUU, as adopted, is reproduced in *Annex 1* of this document. Australia has continued to lead international efforts to combat IUU fishing – including at COFI and the FAO Conference in 2003, through the UN Consultative Process on Oceans and the Law of the Sea, in a newly established international Ministerial Taskforce for IUU fishing, in the International Maritime Organisation (IMO) and in the regional fisheries management organisations (RFMOs) to which it belongs.
3. Where appropriate, the AUS-NPOA-IUU indicates whether the measures outlined are or likely to be binding on Australia through its domestic law or by any of the other means outlined above (principally as binding measures adopted by an RFMO). Binding fisheries conservation and management measures may apply, according to the applicable domestic or international laws, to waters of national jurisdiction and the high seas as well as globally to the nationals and vessels of the country concerned.
4. To a large extent, this AUS-NPOA-IUU is a record of actions already under way to combat IUU fishing by Australia or the RFMOs to which Australia belongs. In some cases new measures and modifications or additions to existing measures are outlined, along with expected timing for implementation where possible.
5. The main parts of the AUS-NPOA-IUU closely follow the structure of the IPOA-IUU. After Part I (Introduction), Part II briefly describes Australia's fisheries and the principal concerns of Australia about IUU fishing, while Part III outlines the principles applicable to the development and implementation of the AUS-NPOA-IUU, which largely parallel those of paragraph 9 of the IPOA-IUU.
6. Parts IV, V and VI of the AUS-NPOA-IUU detail Australia's actions to combat IUU fishing, following the IPOA-IUU virtually paragraph by paragraph. This is followed by Annexes which include the text of the IPOA-IUU and related material. Consistent with the concept of the IPOA-IUU as a 'toolbox' of possible measures from which a country may draw those appropriate to its circumstances, not every provision in the international plan of action has been incorporated into the AUS-NPOA-IUU.

II. Australian Fisheries and the Impact of IUU Fishing

7. Australia's fishing industry ranks fifth among its primary industries, with a gross value of production (GVP) in 2002–03 of \$2.3 billion. Individual Australian fisheries with annual GVPs close to or above \$200 million include rock lobster, prawns, tuna, abalone and pearls. Exports of fish and fish products in 2002–03 were valued at \$1.84 billion and imports totalled almost \$1.2 billion. Nearly 20,000 people are employed in the Australian fishing industry, including in wholesaling and processing.

8. Aquaculture has increased its share of Australia's total fish production by value from 17 to 32 per cent in the last decade. This trend has the potential to reduce to some extent the fishing pressure on stocks of wild caught fish in Australian waters. However, the existence of a significant aquaculture sector could provide IUU fishers in the wild caught fish sector with an opportunity to launder their illegal catch as legally farmed aquaculture production.

9. By value, about 20 per cent of the wild capture fisheries in Australia are managed directly by the Australian Government, with the remainder managed by State and territory governments under Offshore Constitutional Settlements (OCS),¹ some of which involve a single jurisdiction while others operate under joint authority arrangements, such as that between the national, Northern Territory (NT), Western Australian (WA) and Queensland (QLD) jurisdictions for shark and snapper. Of the major nationally-managed fisheries, the most recently published fishery status reports (Bureau of Rural Sciences, Canberra, 2003) indicates that 4 (1) are under-fished, 16 (16) are fully fished, 16 (5) are over-fished, 34 (9) are uncertain and 4 (43) are not classified – the numbers in brackets refer to the comparable data ten years earlier.

10. IUU fishing in the waters surrounding Australian island territories in sub-Antarctic regions, especially those parts of the Australian fishing zone (AFZ) off Heard Island and McDonald Islands (HIMI), threatens Australia's sovereign interests and valuable stocks, primarily of Patagonian toothfish (*Dissostichus eleginoides*), which have been subject to intensive IUU fishing by foreign operators. This activity puts the stock seriously at risk and is potentially extremely harmful to the commercial interests of Australian fishers licensed by Australia to take specified quantities of the fish. It is also a grave threat to the conservation of the Southern Ocean marine ecosystem, including of endangered seabirds, which CCAMLR has responsibility for managing. Combating IUU fishing in these distant and stormy waters is expensive and dangerous. The Australian Government has made a considerable investment toward combating Southern Ocean IUU fishing, including allocating nearly \$90 million over two years for an armed patrol programme, and has successfully arrested several foreign fishing vessels, in some cases with international support. Australia is committed to combatting this IUU fishing which has become the subject of increasingly sophisticated multi-national criminal activities.

¹ The national, state and territory governments in Australia recently agreed to introduce more flexible OCS arrangements, including the regional management of fisheries where harmonised rules applied by two or more jurisdictions will lead to improved cooperation in licensing, management, research and monitoring.

11. Australia's northern waters include areas within the AFZ where traditional fishing by non-motorised foreign vessels operated from parts of the Indonesian Archipelago has taken place for centuries. Under a 1974 memorandum of understanding (MoU) with Indonesia, Australia allows such fishing within a specified area ('the MoU Box') around Ashmore and Cartier Reefs and adjacent reefs and islands. In recent years however, high levels of over-fishing, particularly by illegal, motorised Indonesian vessels in some cases using GPS technology, have seriously damaged fish stocks in the MoU Box, including sharks (generally taken for their fins only), trochus and trepang. Some of these Indonesian communities are becoming increasingly organised in their fishing activity and have acquired more highly powered and efficient vessels and equipment. As the waters of the MoU Box have become less productive, this IUU fishing has spread into wider areas of the northern AFZ.² Illegal fishing in the northern AFZ is now considered to be a well-organised, commercial activity. The AUS-NPOA-IUU outlines specific actions to address IUU fishing in Australia's northern waters.³

12. Some fisheries managed by Australian states and territories⁴ are also affected by aspects of IUU fishing. In particular, the abalone fishery, valued in 2002–03 at over \$200 million, has been and remains subject to intensive, highly organised illegal fishing. Since it is suspected that most of this illegal abalone catch is exported, Australia's national and state governments are presently working together to develop strategies to combat these activities. Other state-managed fisheries subject to significant levels of IUU fishing include rock lobster, prawns and some other high value species (both marine and fresh water), such as snapper, mulloway, King George whiting, calamari, shark, WA Jewfish, eels, Murray cod and golden perch. For most of these species the concern is more for the adverse impact on the economic viability of competing legal operators than on the sustainability of the fish stocks.⁵ In particular, there is a general concern at the level of unlicensed, clandestine (black market) fishing for these higher value. Efforts by the states to combat these IUU fishing activities are outlined in relevant parts of this document as well as in *Annex 4*.

13. The Australian Government is responsible for Australian participation in bilateral fishing agreements and arrangements with several neighbouring countries, particularly Indonesia, Papua New Guinea and New Zealand, and in regional multilateral fisheries conventions and arrangements for highly migratory and straddling fish stocks of particular interest to Australia. Australia is also party to the majority of global fisheries-related conventions that are in force. Details of the specific conventions to which Australia

2 As well as IUU fishing in the region by Indonesian longline, trepang and gillnet fishers, Taiwanese pair-trawlers, longliners and gillnetters and Thai single stern trawlers have conducted IUU fishing in these northern waters.

3 Australia's approach to combating IUU fishing in northern waters is undertaken within broader bilateral policy considerations *vis a vis* its relations with Indonesia and Papua New Guinea. To the extent appropriate in this wider context, Australia seeks to negotiate fisheries conservation and management agreements and arrangements with these countries that are consistent with and support the effective implementation of the AUS-NPOA-IUU.

4 In this document a reference to a 'state' or 'states' includes the six states of the Australian Federation (Western Australia, South Australia, Victoria, Tasmania, New South Wales and Queensland) and the Northern Territory (which in most respects, including fisheries, is a self-governing territory within the Federation). References to 'States', however, are generally references to sovereign nations. Hence, consistent with the IPOA, the use of terminology such as 'flag State responsibility', 'port State measures', etc.

5 In New South Wales, the catch by IUU fishers of abalone and rock lobster is estimated to be in the range of 10% to 40% of the commercial TAC. This is taken into account in determining the TAC.

is, or expects to become, party (and related matters) and Australia's efforts to combat IUU fishing through bilateral and multilateral action are outlined in this document.

14. Australia is also participating in, and has made a significant contribution to, a Ministerially-led task force on IUU fishing on the high seas (the High Seas Task Force) being hosted by the OECD. Comprising Ministers from Australia, the United Kingdom, Canada, Chile, Namibia and New Zealand and the heads of key non-government organisations, the Task Force is working to identify priority actions to prevent and eliminate IUU fishing and build support for their implementation by Governments.

15. At the national level, Australia's fisheries are principally managed under the *Fisheries Management Act 1991* (FMA 1991), the *Fisheries Administration Act 1991* (FAA 1991), the *Torres Strait Fisheries Act 1984* (TSFA 1984), the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999) and relevant provisions of the Quarantine, Customs and Crimes Acts. The states and territories have broadly equivalent fisheries acts and regulations for managing the fisheries for which they are responsible.⁶ In general, as the nature, extent and harm of IUU fishing have increased, Australia has acted to strengthen its fisheries management and law so as to more effectively combat IUU fishing activities. National coordination and consultation on fisheries enforcement and compliance occur through the National Fisheries Compliance Committee (NFCC) which operates under the Australian Fisheries Management Forum (AFMF). Both of these include representation from New Zealand.

16. In June 2003, the Australian Government released *Looking to the Future: A Review of Commonwealth Fisheries Policy*. Both the overall approach to fisheries management and specific actions arising from the Review are relevant to Australia's ongoing campaign against IUU fishing.

17. Quite apart from its adverse social and economic impact on coastal fishing communities, IUU fishing threatens the ecological sustainability of important fish stocks and of many protected marine species and seabirds taken as incidental catch. Implementing the strategic initiatives in the Review – to integrate fisheries policy arrangements with new and emerging marine resources management initiatives, including ecosystem-based fisheries management, by-catch limitation, regional marine planning, marine protected area developments and national coastal policy – and updating fisheries legislation to that end, is providing a sound framework for addressing IUU fishing.

18. In addition, the *Review* specifically commits Australia to:

- develop the AUS-NPOA-IUU and present it to FAO by the end of 2004;
- cooperate with like-minded countries in combating IUU fishing, including through seeking binding commitments for that purpose within RFMOs;
- strengthen its Southern Ocean activities against IUU fishing and forge stronger relations with like-minded countries to fight against IUU fishing in the sub-Antarctic region; and
- engage with Indonesia to deal effectively with IUU fishing in Australia's northern waters.

⁶ In New South Wales, for example, commercial fishing is regulated under the *Fisheries Management Act 1994 and the Fisheries Management (General) Regulation 2002*. A review of crime in fisheries in NSW in 2004 is expected to recommend a range of legislative changes, to strengthen the effectiveness of NSW's fisheries regulation and create the basis for a greater deterrent to IUU fishing.

III. Principles and Strategies

19. Consistent with paragraph 9 of the IPOA-IUU, the AUS-NPOA-IUU is based on the following principles and strategies:

- Australia is employing all means available to combat IUU fishing, including direct domestic and international action and through bilateral and multilateral (global and regional) cooperation, and is to the greatest extent possible strengthening its domestic laws and regulations and seeking binding measures internationally for this purpose. Where domestic control measures not specifically included in the IPOA-IUU are able to assist in combating IUU fishing, they are being so used;
- All relevant stakeholders in industry, government and the wider community, including fishing communities, non-governmental organisations, and those involved in fish and fish processing, transport, distribution, marketing, selling and consumption are being encouraged to participate in the development and implementation of measures to combat IUU fishing;
- Building on actions already under way, Australia is continuing to take a phased approach to combating IUU fishing, so that there are minimal delays in responding to emerging issues and using available measures while new, improved measures are being developed. In that sense, the AUS-NPOA-IUU is a work-in-progress;
- Australia's approach is comprehensive and integrated, addressing IUU fishing in terms of strengthened flag State, port State and coastal State responsibilities, market-related measures and the control of nationals. All relevant economic, social and environmental impacts of IUU fishing are being addressed;
- The implementation of the AUS-NPOA-IUU is also transparent and non-discriminatory and consistent with, and seeking to enhance, the long-term sustainable utilisation of fish stocks and the protection of the environment; and
- Australia is ensuring that the requirements of developing countries in the Asia-Pacific region for technical support in addressing IUU fishing continue to be given due weight in Australia's development assistance programs. Part V and *Annexes 5 and 7* of this document outline some of the work already under way or being planned for this purpose.

20. In addition, where appropriate, Australia is implementing measures to combat IUU fishing which it believes are stronger and likely to be more effective than those in the IPOA-IUU.

21. In this document, 'fishing' and 'fishing activities' include activities which involve or support the taking, trans-shipping, transport, landing, marketing or processing of fish or products derived from fish.

IV. Actions by Australia to Prevent, Deter and Eliminate IUU Fishing

International Instruments (IPOA-IUU paragraphs 10–15)

22. Australia is party to virtually all international conventions and agreements relevant to combating IUU fishing, including the *United Nations Convention on the Law of the Sea of 10 December 1982* ('the 1982 UN Convention'), the *Agreement for the Implementation 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* ('the 1995 UN Fish Stocks Agreement'), and the regional and bilateral conventions, treaties, agreements and MoUs listed in *Annex 2* of this document.⁷

23. The long-standing practice in Australia is not to ratify, accept or accede to international instruments unless the legislative and other steps to enable full and effective implementation have been completed. For example, Australian ratification of the 1995 UN Fish Stocks Agreement was preceded by the passage of detailed amendments to domestic fisheries law (principally the FMA 1991 and FAA 1991). These amendments were proclaimed (given effect) on and from the date that the 1995 UN Fish Stocks Agreement entered into force internationally.

24. Australia recently completed the processes required to accept the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* ('the FAO Compliance Agreement'). Formal acceptance of the Agreement has been accomplished and the Agreement is now a formal annex to the FMA 1991.

25. Australian obligations under the regional fisheries management agreements and arrangements to which it is party (*Annex 2*) are also generally given domestic force through specific legislation. Australia is an active participant in all the international fisheries commissions to which it belongs under these regional agreements and has worked in cooperation with other RFMO member countries to promote and support conservation and management measures to combat IUU fishing, the details of which are outlined in relevant sections of this document.

26. Australia participates fully in COFI at FAO and is developing and implementing (through its own national plans of action) the international plans of action adopted by FAO for reducing the incidental catch of seabirds in long-line fisheries (IPOA-Seabirds) and for the conservation and management of sharks (IPOA-Sharks). *Annex 3* provides more detail on Australian implementation of these IPOAs.

27. The *FAO Code of Conduct for Responsible Fisheries* ('the Code' or 'Code of Conduct') also strongly influences Australian fisheries management. For example:

- High priority is given to the implementation of fisheries management plans, with six of the 14 of Australia's major fisheries currently operating under plans of management

⁷ Australian fisheries experts made major contributions to the development of the 1995 UN Fish Stocks Agreement and the *Agreement for the Establishment of the Indian Ocean Tuna Commission* (FAO, 1993).

and a further four management plans due to be implemented as soon as possible. Some State-managed fisheries are also subject to management plans;

- Australia’s nationally-managed fisheries are subject to fisheries by-catch policies, which require the development of a By-Catch Action Plan for each fishery⁸;
- Under the EPBC Act 1999, fisheries management plans must incorporate the results of strategic environmental assessments, covering target, by-product and by-catch species, including protected species, as well as broader environmental issues;
- Key elements of the Code have been assimilated into Australian fisheries legislation, including the application of the precautionary approach to fisheries management within a framework of environmentally sustainable development;
- Strict fisheries surveillance and enforcement measures regulate Australian fisheries, including the mandatory use of vessel monitoring systems (VMS) in most major nationally-managed fisheries and in some state-managed fisheries⁹;
- Fish stock assessments and related data-dependent fishery management decisions are based on the mandatory collection of timely, comprehensive and reliable data; and
- The Australian Seafood Industry Council has adopted the Code and published an industry-endorsed version for its members. The seafood industry is also implementing a three year project on sustainable fisheries resource use and management.¹⁰

28. Further action by the Australian states to promote and enforce responsible fisheries is outlined in *Annex 4*. This AUS-NPOA-IUU has identified the clear need for all Australian jurisdictions to cooperate in combating IUU fishing through cross-border operations, the sharing of fisheries-related intelligence and other information, joint research on fisheries compliance and the adoption of uniform processes and procedures. These requirements will continue to call for financial and technical resources to address in the increasingly complex task of preventing, deterring and eliminating IUU fishing.

29. As well as hosting the Expert Consultation on IUU fishing mentioned at paragraph 2 above, Australia hosted an FAO Technical Consultation on Indicators for the Sustainable Development of Capture Fisheries in 1999, from which were developed FAO Technical Guidelines For Responsible Fisheries (No. 8). Also, in 1999, Western Australia hosted with FAO a ‘FishRights99’ Conference, the proceedings of which are reported in FAO Fisheries Technical Papers 404/1 and 404/2 (FAO, 2000).

30. Australian experts have made major contributions to several other FAO Technical Guidelines for Responsible Fisheries developed and published under the Code, including guidelines on vessel monitoring systems (VMS) (No. 1, Suppl. 1), on the precautionary approach to capture fisheries (No. 2), on fisheries management (No. 4), on the conservation and management of sharks (No. 4, Suppl. 1) and on the eco-system approach to fisheries management (No. 4, Suppl. 2).

⁸ For example, an *Antarctic By-catch Action Plan* is being implemented to reduce by-catch in Australia’s sub-Antarctic fisheries, including implementation of marine protected areas, strict limits on catch and by-catch, and the use of weighted lines and the prohibition of discharges of dead fish and offal to minimise feeding opportunities for seabirds and marine mammals around fishing vessels.

⁹ New South Wales, for example, is currently considering strengthening its fisheries monitoring and reporting systems by requiring VMS in some state-managed fisheries.

¹⁰ With funding from Australia’s Natural Heritage Trust and other fisheries agencies, six Environmental Management System pilot projects will be undertaken, including documentation of fishing methods and formal and voluntary management methods, as well as the measurement, management and monitoring of risk and impacts in fisheries.

31. The 4th *International Fisheries Observer Conference* was held in Sydney, Australia in November 2004. The conference, which included delegates from a wide range of fishing countries, proved to be an effective forum for discussions on fisheries observer programs and their effectiveness in fisheries monitoring, control and surveillance as key tools in fisheries conservation and management.

32. Fishing on the high seas by Australian vessels or Australian nationals other than in fisheries regulated by an RFMO to which Australia is party is relatively uncommon. Where, in recent cases, this possibility has arisen, Australia has acted expeditiously to commence negotiations with other countries for agreement on measures for the conservation and management of the high seas fish stocks involved. Examples include the orange roughy fishery which straddles the AFZ in the South Tasman Rise, which involved agreeing an MoU with New Zealand, and a potential demersal fishery in the vicinity of some sea mounts in the south west Indian Ocean – for which preliminary discussions have been held with neighbouring countries.

Further Actions by Australia Under IPOA-IUU paragraphs 10–15

Australia will:¹¹

- Finalise and obtain state and territory endorsement of NPOA-Seabirds.
- Finalise all outstanding major fishery plans of management under the FMA 1991.
- Continue to contribute to development of FAO Technical Guidelines under the Code.
- Negotiate new high seas fishery conservation and management arrangements for any newly emerging and currently unregulated fisheries involving Australian nationals.

National Legislation (IPOA-IUU paragraphs 16–23)

33. The Australian Government regularly introduces new or amending Bills (and/or regulations) into the Parliament to enhance the effective conservation and management of fisheries and the protection and preservation of marine eco-systems. State and territory legislation is similarly reviewed periodically. Measures to combat IUU fishing are included as appropriate in these regulatory processes

34. The evidentiary standards and admissibility rules applicable in Australia have not, insofar as fisheries proceedings are concerned, led to prosecutions failing due to relevant technical evidence being ruled inadmissible. Adequately documented evidence obtained from non-government witnesses – such as from authorised Australian fishers operating in the sub-Antarctic AFZ – is also used in proceedings against IUU fishing operators. Australia will ensure that its fisheries-related legislation and regulations are updated when necessary to ensure new technical evidentiary developments can be utilised effectively in proceedings against IUU fishers.¹²

¹¹ In all these ‘action boxes’, the generic expression ‘Australia will’ includes, as the context requires, action at the national level and/or at the state or territory level, as appropriate to Australia’s federal system for fisheries management.

35. In recognition of the extent of serious cross-border crime in Australia, the Commonwealth, state and territory jurisdictions have developed model legislation to provide for cross-border investigative powers for law enforcement against prescribed fisheries crimes. The purpose of the model legislation is to enable law enforcement agencies in Australia to undertake covert investigations that extend beyond the boundaries of any one jurisdiction, so as to ensure a nationally coordinated and cooperative approach to law enforcement against organised criminal networks operating across those jurisdictional boundaries.¹³ The major provisions in the model legislation cover controlled (clandestine) operations, assumed (false) identities, witness identity protection, and the use of surveillance devices, to be authorised and used in cross-border investigations of certain criminal activities. The model legislation includes provisions for persons authorised to conduct controlled operations to do so in certain authorised cases even though, but for the model provisions, such operations would be illegal. The development of a model legislation approach to these matters was agreed by all governments in Australia and the Natural Resource Management Ministerial Council (of the national and state and New Zealand Ministers responsible for fisheries) has agreed to engage with the Standing Committee of Attorneys-General to ensure that the model legislation takes into account cross-border law enforcement powers for fisheries. Some jurisdictions are already moving towards implementing aspects of the cross-border model legislation.

36. Through their direct participation in fisheries under Australian jurisdiction or in international fisheries subject to RFMO management, Australian nationals are becoming increasingly involved in fishing activities on the high seas or in waters subject to the jurisdiction of other countries. Australia has adopted regulations to control its nationals if they are involved in fishing activities in specified areas outside the AFZ, including the Antarctic waters within 200 nautical miles of the Australian Antarctic Territory ‘baselines’, specified areas of the high seas in relation to fishing for southern bluefin tuna or northern bluefin tuna, CCAMLR sub-area 58.5.2 and other specified CCAMLR waters, and the waters adjacent to the AFZ in the area off Tasmania known as the South Tasman Rise.⁹ These regulations apply to Australian citizens, bodies incorporated in Australia or conducting business mainly in Australia, Australian boats and persons on board Australian boats. The effect of the regulations is to bring those to whom they apply under the provisions of the FMA 1991 in relation to activities in the specified areas as if they were carrying out those activities within the AFZ. Subject to Australia in fact

12 Although not usually a matter of evidentiary difficulty, it is noteworthy that ‘inconsistencies’ between different laws can also limit a State’s capacity to combat IUU fishing. In Australia, for example, one recent amendment to the FMA 1991 (s 108A) gave explicit precedence to the enforcement provisions of the FMA 1991 over certain provisions of the *Admiralty Act 1988*. This was to ensure there could not be a repetition of a previous loss of powers of seizure, detention and forfeiture over a foreign fishing vessel convicted in an Australian court of IUU fishing in the AFZ, but for which a foreign bank succeeded, under the *Admiralty Act 1988*, to gain the court’s approval to sell the vessel in order to recover a debt against the vessel’s owners.

13 *Cross-Border Investigative Powers for Law Enforcement*, Report of a Joint Working Group on National Investigation Powers established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council, November 2003, ISBN 0 642 21138 8.

14 See Regulations 4, 4AA, 4AB, 4AC and 4AD of the FMA 1991. In addition, the FMA 1991 (ss 105A, 105B, and 105C) provides for control over Australian nationals on board Australian-flagged fishing vessels on the high seas or in foreign waters.

having the ability to enforce such regulations in any additional specified areas, there is no reason in principle for not extending the regulations to those areas – such as specified areas within the WCPFC area as Australian nationals become more actively involved in fisheries in the western and central Pacific.

37. Some Australian environment and conservation laws also apply extraterritorially. For example, the *Antarctic Marine Living Resources Conservation Act 1981* applies to all Australian nationals and Australian vessels operating within CCAMLR waters. All such persons and vessels engaged in fishing in those waters must be licensed under this Act.

38. The real operators and beneficial owners of vessels involved in IUU fishing can generally hide behind complex corporate veils, to avoid being identified, especially if the vessels involved are flagged to countries which operate ‘open registers’ (flags of convenience) and make little or no effort to exercise their flag State responsibilities and ensure fishing takes place only in accordance with relevant national or regional conservation and management measures. These characteristics have been apparent in all cases involving IUU fishing in Australia’s sub-Antarctic waters. In an endeavour to pierce the corporate veil, Australia recently sought to make it a condition of prompt release of a foreign fishing vessel arrested for IUU fishing in Australian sub-Antarctic waters that the true identity of the real, beneficial owner be disclosed. However, the International Tribunal for the Law of the Sea (ITLOS), ‘keeping in view the overall circumstances of [the] case’, held that the imposition of such a non-financial condition is ‘not reasonable within the meaning of article 292’ of UNCLOS.¹⁵ It is to be hoped that in future cases the ‘overall circumstances’ may be judged by ITLOS to be such as will enable the arresting State to include prompt release conditions, such as those sought by Australia, that will assist efforts to prevent, deter and eliminate IUU fishing.

39. Under UNCLOS, flag States extend their sovereignty to vessels entitled to fly their flag and offer protection to those vessels against all but explicitly sanctioned acts by other States. Vessels without nationality have no such protection and any State has the ‘right of visit’ on the high seas and (if the vessel is definitely without nationality) the right to act in any manner not excluded by international law.¹⁶ At least one RFMO has taken action with respect to vessels without nationality.¹⁷ To date, Australia has not encountered fishing vessels suspected of being without nationality in the AFZ or on the high seas in waters under the jurisdiction of any RFMO to which it is party. Nevertheless, it may be appropriate for Australia to review its domestic law in relation to the effectiveness of its current capacity to take enforcement action against vessels without

¹⁵ *The ‘Volga’ Case* (Russian Federation v. Australia), Application for Prompt Release, Judgement, ITLOS, 23 December 2002.

¹⁶ See UNCLOS Articles 91, 92 and 110. The US, for example, has domestic law which defines ‘vessels subject to the jurisdiction of the United States’ to include stateless vessels, which allows the US to take enforcement action against them.

¹⁷ In 1999 the Northwest Atlantic Fisheries Organisation (NAFO) Contracting Parties agreed to report on what legal, administrative and practical actions they have taken to promote compliance with NAFO measures by non-Contracting Parties. In implementing such measures, NAFO agreed that any vessel which they have reasonable grounds to believe to be without nationality may, where such a vessel is sighted in the NAFO Regulatory Area, be boarded and inspected and, if warranted, NAFO Contracting Parties may take such further action as may be appropriate under international law. To that end, NAFO Contracting Parties were encouraged to examine the appropriateness of domestic measures to exercise jurisdiction over such vessels.

nationality on the high seas, whether in Australia's domestic capacity or as a member of an RFMO.¹⁸

40. The IPOA-IUU (paragraph 21) calls for sanctions against IUU fishing that are severe enough to be a deterrent and that will 'deprive offenders of the benefits ... from such fishing.' Stronger national sanctions against IUU fishing were included in fisheries legislation enacted by the Australian parliament in March 2004 and entered into force on 6 August 2004. Penalties were increased for fishing offences by foreign fishing vessels larger than 25 meters in length from \$550,000 to \$825,000.¹⁹ Amendments to the fisheries legislation also established a procedure where Australian authorities, upon pursuit and apprehension of a foreign fishing vessel, can attempt to recover the sometimes significant cost of the pursuit from the owners of the vessels.

41. At present, there are substantial differences between the severity of fisheries penalties in the Australian states, with Tasmania generally imposing far more severe fines than other states.²⁰ Victoria has recently strengthened the penalties in its fisheries legislation to include indictable offences,²¹ which are expected to provide a stronger deterrent effect on repeat offenders. South Australian regulations provide – in addition to fines, imprisonment and asset confiscation, etc – for an 'additional wholesale value' penalty of five times the wholesale value of an illegal abalone catch. In general, violations of Australian fisheries law involve offences of strict liability. Most jurisdictions in Australia have 'proceeds of crime' legislation (for example, the *Proceeds of Crime Act 2002* of Australia), which apply to indictable offences.²² Australian taxation law also provides for the profits from illegal activities to be taxed, so effective cooperation between fisheries and taxation authorities can result in a further (taxation) 'penalty' being imposed on IUU fishers.

18 There has been some action by Australian authorities in northern AFZ waters, involving the boarding of fishing vessels to determine nationality and/or whether they were licensed by Indonesia. This action is provided for in the arrangements agreed by Australia and Indonesia. Under the FMA 1991, any boat other than an 'Australian boat' is defined to be a 'foreign boat', which would include any vessel without nationality. The FMA 1991 creates an offence where such a vessel, while on the high seas, supports illegal foreign fishing within the AFZ or where – if the vessel is in fact registered by a State party to the 1995 UN Fish Stocks Agreement – it contravenes a relevant RFMO's conservation and management measures or is fishing there without the authority of the flag State. *Prima facie*, these provisions may be used against a vessel without nationality. There would, however, be merit in reviewing whether to extend their application to any fishing vessel without nationality on the high seas.

19 Other measures proposed in these amendments include giving AFMA the legal right to direct that fishing may not occur in part, or all, of a fishery and to establish and maintain a public register of fishing permits; requiring that a fishing concession is physically returned to AFMA when it is surrendered; and providing that fisheries officers need not produce identity cards where it is impractical to do so - for example, when a patrol boat gives a radio direction to the master of a fishing vessel.

20 For the severity of fisheries penalties to be effective, courts need to be consistent in imposing the penalties in specific cases at appropriately high levels. NSW Fisheries, for example, is liaising with the courts to emphasise the impact of IUU Fishing on fish stocks and the environment.

21 Victoria has created new indictable offences in relation to trafficking in, possessing or taking a commercial quantity of a priority species. Other, complementary measures include increased powers of arrest, search, and of executing a warrant and the creation of new summary offences regarding the making of false statements.

22 Because 'proceeds of crime' legislation is conviction based, it will not have a major additional effect on, for example, the operation of the FMA 1991 regarding IUU fishers. It may, however, be utilised to complement and strengthen measures against processors and marketers of product obtained from IUU fishing operations.

42. This document deals with paragraph 22 of the IPOA-IUU (on non-cooperating States to an RFMO) in the section on RFMOs – see paragraphs 107-113 of the AUS-NPOA-IUU.

43. Paragraph 23 of the IPOA-IUU calls on countries to avoid providing economic support, including subsidies, to companies, vessels or persons involved in IUU fishing. In Australia, the FMA 1991 provides in several places, for example s 39, for the cancellation or suspension (without compensation) of a fishing concession if the concession-holder is convicted of an offence under the FMA 1991 or its regulations or under any law of Australia relating to fishing. Since IUU fishing activities undertaken within Australia’s jurisdiction are almost certainly contrary to Australian fisheries law (including law derived from global or regional international obligations), the cancellation or suspension of a fishing concession would generally disqualify the concession-holder from enjoying any economic benefit he or she might otherwise have been entitled to.²³ State fisheries laws also provide for the suspension or cancellation of fishing licences in cases of serious violation.²⁴ In general, jurisdictions in Australia have been reluctant to invoke cancellation or suspension provisions and the matter is under review for nationally-managed fisheries. Any changes to the law or its application arising from this review will have regard to the need to strengthen provisions that assist in combating IUU fishing.

23 Australian fishers (individually, or as members of industry or coastal region groups) generally qualify as ‘primary producers’ (or equivalent qualifying terms) within the meaning of various Australian taxation, income support, income averaging, small business, energy grants credits, industry training subsidy, industry development, regional development, export development, market information, research and development, ship-building innovation and environmental protection programs and schemes. (See *The FishBook, A Guide to Australian Government Programs, Grants and Services for the Australian Seafood Industry*, © Australian Government, 2003). Since most of these programs are directed at a far wider group of ‘primary producers’ than fishers alone, it could be exceedingly complex to place specific regulatory restrictions on fishers’ eligibility based on their compliance with the AUS-NPOA-IUU. The matter could, however, be reviewed. Where the possession of a fishing concession under the FMA 1991 is a prerequisite to eligibility for the provision of economic support, a fisher who has been convicted of an offence through engaging in IUU fishing and thereby lost that concession, would also become ineligible for the support.

24 For example, Western Australia can suspend or cancel fishing licences for fisheries offences and believes this provides an effective deterrent. In particular, it is the ‘keystone’ of the western rock lobster fishery compliance program, where it is strongly supported by the fishing industry.

Further Actions by Australia Under IPOA-IUU paragraphs 16–23

Australia will:

- Ensure that Australia’s fisheries-related legislation and regulations are updated when necessary so that new technical evidentiary developments can be utilised effectively in proceedings against IUU fishers.
- Periodically review the need to specify additional areas outside the AFZ where, by regulation, Australian fisheries law would be made applicable to Australian nationals.
- Drawing on internationally agreed arrangements and methodologies developed in the context of identifying persons and corporate entities engaged in or supporting international crime, such as drug trafficking, terrorism, etc, work with other countries and relevant international organisations to pierce the corporate veils which hide the true identity of individuals and companies engaged in or supporting IUU fishing.
- Consider the need for specific new domestic laws and regulations to enable Australia to take effective enforcement action against fishing vessels without nationality.
- Continue the periodic review of national and state fisheries laws and regulations, particularly regarding provisions to combat IUU fishing.
- Through the NFCC, review the adequacy of national and state fisheries-related penalties and whether more uniform penalty levels across jurisdictions should be developed.
- Ensure that the review of fishing concession cancellation or suspension provisions in nationally-managed fisheries law has full regard to the need to strengthen measures to combat IUU fishing.
- Provide for ‘proceeds of crime’ legislation to apply, as appropriate, to serious fisheries offences in Australia in cases where it does not already apply, particularly in relation to the processing and marketing of product obtained from IUU fishing operations.
- Review the qualifying rules for economic support programs for fishers, to minimise the opportunity for benefits from such programs being provided to fishers who engage in IUU fishing.
- New South Wales will implement appropriate recommendations from the recent review of crime in fisheries, including the strengthening of fisheries legislation.

Monitoring, Control and Surveillance – MCS – (IPOA-IUU paragraph 24)

44. The Australian Fisheries Management Authority (AFMA) operates MCS systems in nationally-managed fisheries that are consistent with the provisions of paragraph 24 of the IPOA-IUU. For example:

- *Fisheries Management Papers No 5 and 5a* on the exploration of fish resources outline AFMA’s policy on access to new fishing areas (see AFMA’s internet site www.afma.gov.au/pubs/).

- AFMA maintains a current fisheries licences database, fishing permits are renewed annually and AFMA maintains a public register of fishing permits.
- VMS is required in most major fisheries, including all vessels licensed in the South Tasman Rise (orange roughy), western deepwater trawl, eastern tuna and billfish, northern prawn, Bass Strait central zone scallop and south east non-trawl fisheries. In addition, any foreign fishing vessel seeking to fish in Australian waters must carry and operate AFMA-approved VMS-related equipment. AFMA is currently considering extending VMS to other fisheries.
- There is at present a requirement for 100% observer coverage in Australia's HIMI fishery and several other fisheries operate observer schemes on the basis of a more limited coverage. In some cases, the observer program is primarily directed at scientific data-gathering which does, however, also have a recognised compliance value. Observer programs also contribute to reducing the incidental mortality of seabirds and by-catch, which is a further reason for their extension in those fisheries currently operating with limited or no observer presence.
- AFMA provides training on MCS to enforcement officers in nationally-managed fisheries, including to state fisheries officers and to relevant navy and customs officers.
- Compliance risk assessments are undertaken for major nationally-managed fisheries, based on the agreed Australia/New Zealand Risk Management Standard (AS/NZS 4360). These risk assessments are the foundations of compliance plans and are used to establish compliance activity priorities and resource allocations.
- AFMA staff regularly visit fishing towns in Australia and attend meetings with fishers to promote fishing industry knowledge of and cooperation in MCS activities. The system of Management Advisory Committees (MACs) which operate in the major Australian fisheries are important means of consulting fishing industry representatives on MCS.
- Australian judicial systems have, as a result of the numerous prosecutions against IUU fishers, a good working knowledge of MCS issues, both national and international. This knowledge extends to relevant elements of international law (including UNCLOS provisions for hot pursuit and prompt release).
- AFMA staff, with the assistance of state fisheries officers, maintain a database of MCS information, including fisheries intelligence, prior landing reports, catch disposal documentation and VMS data.
- The FMA 1991 (s 84) empowers fisheries officers to board and inspect any vessel where there are reasonable grounds to believe the vessel has been used or is being used or is intended to be used for fishing in the AFZ (s 84 is a section in Part 6 of the FMA 1991, which provides for wide powers of surveillance and enforcement, including powers of detention, search, seizure, etc. These powers – including powers of boarding and inspection in accordance with relevant RFMO measures – extend to the surveillance and enforcement of applicable fisheries law and regulations on the high seas against the vessels of foreign States party to the 1995 UN Fish Stocks Agreement).

45. Australia also contributes to the development and, where possible, implementation of strengthened MCS measures in the RFMOs to which it belongs. For example Australia, with the USA and New Zealand, campaigned for the adoption of a centralised vessel monitoring system (cVMS) for CCAMLR fisheries and participated in the system's trial. The adoption of the cVMS, agreed by CCAMLR in 2004, will ensure that vessel location

data, of a consistent format and standard, is forwarded in real time to the CCAMLR Secretariat. Australia will continue to seek improvements to strengthen the cVMS. In 2004, Australia also proposed improvements to CCAMLR's illegal, unreported and unregulated (IUU) Vessel List for Contracting Parties and the establishment of a standing list of vessels licensed by Contracting Parties to participate in CCAMLR fisheries (a Licensed Vessels List). The lists will be publicly available on the CCAMLR website and communicated to the FAO and other RFMOs to assist identification of the status of vessels fishing in CCAMLR waters.

46. Article 22(f) of the 1995 UN Fish Stocks Agreement provides for the use of force by inspectors 'when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties'. However, some RFMO agreements, with boarding and inspection provisions that were developed before IUU fishing was recognised as such a serious threat, did not envisage the need for the use of force. In these RFMOs, some member States are reluctant to undertake (unarmed) boarding and inspection at sea against vessels suspected to have engaged in IUU fishing. Australia is considering whether to seek member State support for strengthening the boarding and inspection provisions in these RFMOs.

47. Australia is a founding member of the International Monitoring, Control and Surveillance Network for Fisheries-Related Activities ('MCS Network'), an international cooperative effort to increase effectiveness in enforcing measures designed to protect world fisheries and ecosystems. The MCS Network now includes Australia, the USA, Chile, Peru, the European Commission, Canada, New Zealand, Norway, the Forum Fisheries Agency and (as observer) FAO. The Network meets annually.²⁵ Australia has also supported regional MCS workshops held by the Forum Fisheries Agency, through the provision of funds and the participation of Australian MCS experts.

48. Several nationally-managed fisheries have MCS services provided by state fisheries and/or police authorities, generally to take advantage of 'local' expertise and efficiencies. For example, Queensland fisheries authorities provide compliance support for most national fisheries based in Queensland ports, for fisheries management in the Torres Strait Protected Zone and in some long-line fisheries, while the Tasmanian Police Service provides similar services for relevant national fisheries in waters around Tasmania. Western Australia supports the largest group of state fisheries officers dedicated to nationally-managed fisheries, who provide the bulk of fisheries MCS for Australia's sub-Antarctic fisheries and in combating IUU fishing in northern Australian waters. South Australia provides compliance support for several nationally-managed fisheries, including the gillnet, hook and trap fishery, the southern bluefin tuna fishery and the Great Australian Bight trawl and south east trawl fisheries. This work focuses on monitoring quota evasion, unauthorised fishing and by-catch, through vessel inspections (at sea and in port), fish receiver and processor inspections and audits, intelligence gathering, the operation of prior reporting systems, fish farm audits, VMS operations and the provision of education and extension programs.

49. Victoria provides similar support for nationally-managed fisheries operating from Victorian ports, the NT Police Service is responsible for compliance in NT sectors of the northern prawn fishery and NT fisheries officers are directly involved, with Australian

naval and customs officers in MoU Box compliance and enforcement action. New South Wales Fisheries undertakes fisheries compliance on behalf of AFMA in the south east trawl, east coast tuna, southern bluefin tuna and gill, hook and trap fisheries, including through in-port vessel and fish processor inspections, at-sea patrols, aerial surveillance, covert operations, education, advice and extension and multi-jurisdictional operations.

50. The MCS arrangements for nationally-managed fisheries place particular priority on combating IUU fishing by targeting high risk offenders, undertaking audits of compliance, cooperating in joint operations and information sharing and on gathering intelligence through the operations of dedicated fisheries investigations units and the use of secure intelligence databases. Under service provider arrangements with AFMA, state officers act as authorised fisheries officers in designated national quota-managed fisheries. The extent and effectiveness of all these arrangements with the states for nationally-managed fisheries depend on the provision of appropriate financial and human resources and the formalisation of operational arrangements through MoUs and service level agreements, the development of agreed standards of performance and regular face-to-face meetings between AFMA and state fisheries representatives. In some fisheries, new measures are under consideration, including extending VMS to major fisheries not already covered by VMS,²⁶ additional input controls, increasing the number of at-sea patrols, the implementation of more accurate and timely catch measurement and information exchange and the use of new technologies (such as improved TV cameras in monitoring SBT cage transfers).

51. In the Australian states, MCS for state-managed fisheries includes VMS (for example, on all trawlers in Queensland, on vessels in the Tasmanian giant crab fishery and for the northern zone rock lobster fishery in South Australia), on-line access to licensing and quota-monitoring information including catch records, the use of observers, the mandatory tagging of certain high value species, such as rock lobster in NSW, regular audits of fish processors and registered fish receivers and close cooperation on fisheries enforcement issues with national authorities, particularly AFMA, as well as the Great Barrier Reef Marine Park Authority²⁷ and Coastwatch, Australia's civil maritime surveillance and response service. These MCS arrangements are targeted almost exclusively at the licensed, commercial fisheries sector and have limited impact on unlicensed (non-commercial) fishing operations. Commercial fishers operating legally have an interest in reporting cases of IUU fishing and the states have 24 hour-a-day 'Fishers Watch' reporting services for this purpose, which can also be accessed by interested members of the public. In cases of suspected criminal activity, state fisheries and police authorities may rely on undercover surveillance and intelligence-gathering operations.²⁸

25 Issues for urgent consideration by the Network include how better to resource it and the development of protocols for sharing and exchanging information among Network members in order to more effectively combat IUU fishing while protecting the confidentiality of commercial data from responsible fishers.

26 For example, AFMA and WA Fisheries are reviewing cross-jurisdictional arrangements for VMS in northern waters.

27 The protection of the Great Barrier Reef environment and eco-systems has been further enhanced by a ban on fishing and shipping from one-third of the Great Barrier Reef Marine Park from 1 July 2004. The ban is in response to the threats to the reef from record high temperatures, over-fishing and pollution. Breaches of the ban will attract fines of up to \$1.1 million for companies and up to \$220,000 for individuals.

28 In NSW, however, Annual District Compliance Plans cover both commercial and recreational fishing. They are implemented by each district, assisted by a state-wide Fisheries Investigation Unit.

52. Australia's multi-jurisdictional arrangements can impede effective MCS when different states apply differing fishing licence conditions for the same species – such as quotas or possession limits – or where there is an inability to conduct enforcement or to prosecute an offender in a neighbouring jurisdiction.²⁹ The application of different levels of penalty in neighbouring states for the same offence can also create enforcement difficulties. The response to cross-border jurisdictional issues outlined above (see paragraph 35) should help to alleviate these concerns. The NFCC is an important vehicle for coordinating and improving MCS between jurisdictions in Australia. Some states include compliance and monitoring plans in their MCS arrangements, with built-in review processes and timetables. Compliance activities are directed at all components of a fishery, from catching to the retail and export sectors and in some states, for example the NT, are implemented by units established for the purpose in police departments. Compliance strategies are based on maximising voluntary compliance where this is expected to be effective, while targeting high risk offenders in fisheries where there is a significant level of IUU fishing.

Further Actions by Australia Under IPOA-IUU paragraph 24

Australia will:

- Further develop and implement, as appropriate, proposals to extend VMS and observer programs to additional nationally-managed fisheries.
- At national and state levels, implement the National Fisheries Compliance Strategy (Annex 4) and update it to more effectively combat IUU fishing.
- Review and, if appropriate, seek relevant RFMO support to strengthen at-sea boarding and inspection procedures on the high seas in the RFMO region, including by providing for the use of force in appropriate circumstances when the vessel is suspected to have engaged in IUU fishing.
- Complete as soon as possible the development of strategies to combat the illegal take and sale of abalone.
- Through AFMA and the state fisheries authorities, continue to improve MCS operations, as outlined in paragraphs 44–52.
- Review the need to more effectively extend MCS operations into the states' unlicensed fisheries sectors in cases where there are significant and harmful levels of IUU fishing.
- Ensure that cross-border jurisdictional impediments to effective fisheries MCS in Australia are removed or minimised as far as possible.
- Consider and implement, as appropriate, the recommendations of the national study into organised crime in fisheries and the seafood industry in Australia when it has been completed.

²⁹ Australian authorities have commissioned an 18 month national study into the extent of crime in fisheries (and the seafood industry) and the extent to which it threatens existing or proposed fisheries management arrangements. The study, due to be completed in December 2005, will examine the adequacy of current laws and enforcement regimes and determine the need for strengthened enforcement powers, policing methods and cooperation between fisheries and police agencies.

National Plans of Action (IPOA-IUU paragraphs 25–27)

53. This AUS-NPOA-IUU gives full effect by Australia to the IPOA-IUU. Although the IPOA-IUU is a voluntary instrument, Australia has given binding effect to its major provisions, insofar as the provisions are Australia’s sole responsibility, through the enactment of comprehensive domestic legislation and regulations. For provisions of the IPOA-IUU which require international cooperation bilaterally, regionally or globally, Australia has taken a leading role in negotiating and giving international effect to fisheries conservation and management measures which implement those provisions – where possible under legally binding agreements and arrangements. The development of this AUS-NPOA-IUU involved close consultation with relevant national and state governmental agencies as well as the fishing industry and non-governmental organisations.

54. Australia is regularly reviewing its fisheries management in the light of the adverse effects of IUU fishing and will continue to review national legislation to strengthen its capacity to combat IUU fishing. Consistent with the IPOA-IUU, Australia will formally review and amend the AUS-NPOA-IUU periodically (at least every four years) to reflect these regulatory and management changes. Australia will continue to report biennially to FAO on the implementation of the Code of Conduct, including on actions to combat IUU fishing.

55. Australia has many formal and informal mechanisms and arrangements in place to ensure the effective internal coordination of fisheries management and related marine resource and biodiversity conservation. In recent years, the need to combat IUU fishing has been prominent in the working plans and actions of these bodies and processes. Effective cooperation between Australia’s national and state fisheries authorities is essential and has resulted in agreement in principle to amend each jurisdiction’s legislation to take account of ‘corresponding law’ in other jurisdictions.³⁰

56. In the Bass Strait, for example, national and Tasmanian authorities have cooperated in the management of adjacent nationally-managed and state-managed scallop fisheries. Most state fisheries enforcement authorities have good, formal and informal cross-border working relations with counterpart officers in neighbouring states, for example Victoria and New South Wales in their border region in relation to abalone and Victoria and South Australia in relation to rock lobster.³¹ In South Australia, there is fisheries agency representation on a Joint Agency Group (JAG) comprising, in addition, South Australia Police, Australian Customs Service, Australian Federal Police, Australia Post, Australian Crime Commission, Australian Taxation Office, Centrelink, and representatives of the Australian Department of Immigration and Multicultural Affairs, and the South Australian Departments of Correctional Services and of Transport. The JAG provides a formal mechanism for liaison on law enforcement and intelligence in South Australia. It provides an effective means of cross jurisdictional liaison on fisheries-related crime.

³⁰ Among other things, this will help to overcome current difficulties in effective fisheries enforcement due to disparate legislative provisions and penalties and, for example, the current inability in some cases of a state to prosecute holders of dual jurisdiction licences if an offence occurs in the other jurisdiction.

³¹ The NSW Fisheries Management Act 1994, for example, provides for ‘hot pursuit’ of fisheries offenders into adjacent jurisdictions.

Similar Joint Agency Working Groups operate in NSW. The Australasian Fisheries Law Enforcement Conference (AFLEC) is a valuable tool for Australian and New Zealand fisheries compliance authorities to exchange intelligence, discuss cross-jurisdictional issues and explore cross-border operational matters.

57. Additional efforts will be made nationally and internationally by Australia to enhance fisheries enforcement coordination, including those aspects of IUU fishing – such as the piercing of the corporate veil behind which IUU fishers can hide and the better integration of fisheries and maritime regulation – which have to date proven to be the more difficult to address. The MCS Network mentioned above (paragraph 47) will play an increasingly important role in international coordination of fisheries enforcement.

Further Actions by Australia Under IPOA-IUU paragraphs 25–27

Australia will:

- Continue to regularly review domestic law and regulations and international agreements and arrangements in order to more effectively coordinate action to combat IUU fishing and, to the fullest extent possible, incorporate the outcomes of the reviews in binding domestic and international provisions.
- Ensure cross-jurisdictional fisheries management arrangements within Australia's federal system operate effectively in all relevant fisheries.
- Reflect these changes when the AUS-NPOA-IUU is reviewed and report progress in implementing it biennially to FAO.

Cooperation between States (IPOA-IUU paragraphs 28–31)

58. Australia has bilateral fisheries or fishery-related agreements or memoranda of understanding (MoUs) with New Zealand, Indonesia, Papua New Guinea, and France and has commenced negotiations with South Africa and the United Kingdom. Australia is also an active participant in, and party to, the regional fisheries management their organisations listed in *Annex 2*. Their establishing instruments provide for direct cooperation in the effective conservation and management of fisheries and, in recent years, have become the vehicles for enhancing efforts to combat IUU fishing, including in direct response to the IPOA-IUU. Details of specific provisions to combat IUU fishing through these cooperative mechanisms are provided in relevant sections of this national plan of action.

59. Australia and Papua New Guinea (PNG) are separated by the Torres Strait, an area of many islands, unsurveyed waters and shoals and significant indigenous populations living partly traditional lifestyles. Moreover, Indonesia is close by. IUU fishing takes many forms in the region, including non-compliance with the *Torres Strait Treaty* by PNG-based and Australian-based fishers and illegal fishing incursions by Indonesian and other foreign fishing vessels. *Annex 5* gives an outline of these issues and of the efforts being made by Australia and PNG to combat this IUU fishing. Bilateral cooperation between Australia and Indonesia on shared stocks research and management, alternative

livelihood development and fisheries management capacity-building have been beneficial in terms of enhancing more responsible fishing. Under a joint project on shared tuna fisheries, Australian and Indonesian scientists are reviewing and assessing the status and monitoring of Indian Ocean tuna stocks and related data-gathering systems in the waters between the two countries. The project is also monitoring long-line fishing fleets based in several ports in Bali and Java, to develop a system for the collection, storage and analysis of all catch data.

60. Australia is also cooperating with a number of states through the Ministerially-led High Seas Task Force on IUU fishing (see paragraph 14) to prioritise and advocate measures to combat illegal fishing.

61. Many other examples of cooperation between Australia and other States, consistent with sub-paragraphs 28.1–28.7 of the IPOA-IUU, are outlined in the AUS-NPOA-IUU, including in *Annex 6* in relation to cooperation through RFMOs. The MCS Network (see paragraph 47 above) was established specifically to promote and support more effective cooperation between States to address IUU fishing issues.

62. Australia recently completed domestic legislative steps in order to formally accept the 1993 FAO Compliance Agreement. Consistent with Article VI of that Agreement, Australia will inform FAO and other relevant countries and regional fisheries management organisations about fishing vessels deleted from Australia's high seas fishing vessel records or whose authorisation to fish has been cancelled and, unless prevented from doing so for valid legal reasons, the reasons for such deletions or cancellations.

63. In order to facilitate cooperation and exchange of information, Australia's points of initial contact on matters related to fisheries conservation and management issues, including IUU fishing, have been (and will continue to be) well publicised to counterpart agencies and organisations, bilaterally and regionally. Details of these contact points and personnel are also included and periodically updated on the internet 'home pages' of relevant Australian agencies.

64. The agreements and arrangements referred to in paragraphs 58–59 above provide for cooperation with the countries and RFMOs concerned for the enforcement of applicable laws and conservation and management measures. For example, Australia's bilateral treaty with France (see *Annex 2*) provides a framework for cooperation on surveillance and the exchange of information relating to IUU fishing in the waters adjacent to the French Southern and Antarctic Territories and the Australian territories of Heard Island and the McDonald Islands. The treaty also provides for further agreement on cooperative enforcement in the area. Australia will continue to pursue similar arrangements with other States with Antarctic interests. Some other examples of cooperation are outlined in *Annexes 5–7*.

Further Actions by Australia Under IPOA-IUU paragraphs 28–31

Australia will:

- Continue to take a leading role in FAO, the OECD and other relevant international forums in advocating measures to combat IUU fishing.
- Implement additional joint fisheries enforcement actions with Papua New Guinea as outlined in Annex 5 and within the CCSBT, CCAMLR and IOTC as outlined in Annex 6.
- Work towards agreement with France on an agreement for cooperative enforcement in the maritime areas of the French Southern and Antarctic territories and Heard Island and the McDonald Islands, as provided for in the existing treaty.
- Work towards bilateral agreements with other States, as appropriate, on cooperative surveillance and enforcement in sub-Antarctic fisheries.
- Implement the provisions of Article VI of the FAO Compliance Agreement, including reporting on deletions and cancellations from Australia's high seas fishing vessel records.

Publicity (IPOA-IUU paragraph 32)

65. Australia uses all available means to publicise actions taken to combat each case of IUU fishing it encounters. Internationally, Australia will continue to use multilateral forums such as COFI and the OECD, as well as RFMOs, to publicise its concerns about and actions and proposals on combating IUU fishing (see Australia's 2003 COFI statement in *Annex 1*). Australian Ministers responsible for fisheries at national and state levels make regular media statements on actions and issues related to combating IUU fishing. AFMA regularly publishes articles about regulatory matters and issues relating to combating IUU fishing in its *Fishing Future* newsletter. There is also regular publicity in the Australian media and on the internet about the apprehension and prosecution of vessels, masters and crew involved in IUU fishing in the AFZ and regular television documentaries on action against IUU fishers in the sub-Antarctic and northern waters of the AFZ.

66. State fisheries authorities conduct extensive communication programs to educate and inform the public and key stakeholders about IUU fishing, including media campaigns, publicity about successful prosecutions and the penalties imposed, information about new conservation and management measures in the commercial and recreational fishing sectors and the importance of ensuring sustainable fishing and protecting threatened species and aquatic habitats. Information and publicity are also placed on each authority's internet home page and presented at public meetings and agricultural shows, with a focus on increasing the knowledge and awareness of fishing rules and regulations and fostering the adoption of sustainable and responsible fishing practices.³²

³² The NSW website, for example, includes information on sustainable commercial and recreational fishing, fishery management strategies (including associated environmental impact statements and indigenous fishing issues), threatened species, marine protected areas, aquaculture and current research projects.

67. Some states operate and are currently working to improve FISHCARE volunteer programs which, though not involving enforcement powers, are valuable for information dissemination to and data collection from fishers, fishing clubs, schools and the public. In Queensland, for example, there are around 150 FISHCARE volunteers. Other means of publicity about responsible fishing include fisheries agency magazines, fishing clinics, community and school education programs, signposting at boat ramps and fishing sites, ‘river watch’ information stations, marine ranger programs and the provision of free measuring gauges and other fishing regulation guidelines to recreational fishers. In New South Wales, fisheries authorities are working with industry representatives to improve the effectiveness of advisory material for the commercial sector (principally new entrants) on the importance of responsible fishing. Among other things, codes of conduct are being developed, published and implemented for all commercial fisheries. NSW Fisheries also employs several dedicated education officers.

68. Australia also participates with other countries in compiling and publicising lists of IUU vessels (vessels, often on open registers, known or suspected to have engaged in IUU fishing) and authorised vessels (vessels licensed to fish and in good standing) in connection with the efforts of RFMOs to combat IUU fishing.

Technical Capacity and Resources (IPOA-IUU paragraph 33)

69. Faced with increasing levels of IUU fishing by foreign fishers within the AFZ and in adjacent high seas areas subject to RFMO management, Australia has increased significantly its technical capacity and resources to combat these activities. Australia has allocated almost \$90 million for the two years commencing in July 2004 to enable armed patrols of the HIMI region. Australia is also actively working with and assisting other countries as outlined in *Annexes 5–7*, including through the allocation of ODA funds in the Asia-Pacific region. Domestically, the NFCC provides an effective forum for exchanges among all jurisdictions on resource needs and technical issues affecting their capacity to combat IUU fishing.

Flag State Responsibilities (IPOA-IUU paragraphs 34–50)³³

Fishing Vessel Registration (IPOA-IUU paragraphs 34–41)

70. Under the Shipping Registration Act 1981 (SRA 1981) of Australia, Australian-owned fishing vessels are exempt from compulsory registration (s 13), but if they apply to be registered (and meet relevant conditions, such as complying with tonnage measurement and vessel marking requirements, etc) they ‘shall’ be registered (s 14). Importantly, it is an offence of strict liability under s 68 of the SRA 1981 for an unregistered ship to depart from an Australian port to ‘a place outside Australia’, meaning a place beyond the outer limits of Australia’s (12 nautical mile) territorial sea. Therefore all Australian-owned fishing vessels *must* be registered in order to fish beyond the territorial sea. These fishing vessels, by s 29 of the SRA 1981, have Australian nationality and are entitled to

³³ It is, regrettably, the failure of many States to effectively exercise their responsibilities as flag States, *inter alia*, with respect to their fishing vessels and nationals that has necessitated a range of ‘additional’ measures by (non-flag) port and market States, as provided for in the IPOA-IUU and related international instruments.

fly an Australian flag.³⁴ Accordingly, they are also Australian-flagged boats as defined by s 4(1) of the FMA 1991 and are subject in that capacity to the FMA 1991 and related legislation and regulations, which operate to ensure that Australian-flagged fishing vessels do not engage in or support IUU fishing. The FMA 1991 defines *fishing* to include a broad range of fishing-related activities, including ‘any operations at sea directly *in support of, or in preparation for,* any [other] activity described in [that] definition’ (emphasis added). The SRA 1981, however, defines *fishing vessel* more narrowly, so that Australian-owned support vessels are not exempt from *compulsory* registration (under s 12 of the SRA 1981).

71. Under Australian law, fishing vessels may not be registered in Australia unless they are Australian-owned or are on demise charter to Australian-based operators. Since all fishing vessels registered by Australia are subject to domestic fisheries law which imposes , strong flag State obligations, there is no legal basis for foreign-owned or controlled fishing vessels with histories of non-compliance with fisheries conservation and management measures to be registered in and flagged by Australia.

72. Under the SRA 1981 (s 17) an application for registration as an Australian ship of a ship that has at any time been registered under the law of a foreign country must be accompanied by evidence to show that the ship is no longer registered by that foreign country, or that the foreign registration will be closed before the ship is registered by Australia. At present, however, there is nothing in the SRA 1981 to require the registration by Australia of such a ship, if it is a fishing vessel, to be conditional on any matter related to the prior history of compliance or non-compliance by the vessel or its owners with any fisheries (or other) law or measure. To that extent, Australian fisheries and maritime laws do not provide a basis for Australia to comply directly with paragraph 36 of the IPOA-IUU. Since, however, a formerly foreign registered fishing vessel, upon being registered by Australia in accordance with the SRA 1981, becomes subject, should it be used for fishing, to Australian fisheries law, the prior history of the vessel is not material as to whether it may or may not, as an Australian-flagged fishing vessel, engage in or support IUU fishing. In that sense, therefore, Australian practice complies with the exceptions to paragraph 36 of the IPOA-IUU provided in sub-paragraphs 36.1 and 36.2.

73. Under the SRA 1981 (s 14(d)), ships under demise charter to Australian-based operators may be registered by Australia. Demise charter involves the charterer having whole possession and control of the ship. Therefore, fishing vessels under demise charter to Australian-based operators and registered as such are subject to Australian fisheries law and accordingly are no more likely to engage in IUU fishing than if they were Australian-flagged fishing vessels not under charter. A foreign-flagged fishing vessel, whether or not under charter, is also subject to relevant Australian fisheries laws should it be used for or to support fishing in waters subject to Australia’s jurisdiction, including waters beyond the AFZ where that jurisdiction applies by virtue of an international agreement or arrangement involving Australia or where the vessel is owned or operated or crewed by Australian nationals.

³⁴ Fishing vessels whose owners choose (legally) not to register them (and thus cannot legally fish or travel beyond the territorial sea) are nevertheless Australian ships, with Australian nationality, if they are Australian-owned ships exempt from registration under the SRA 1981, or wholly owned, or operated solely, by Australian residents and/or Australian nationals (s 29(1)(b) of the SRA 1981). They, too, are Australian-flagged boats under s 4(1) of the FMA 1991.

74. Paragraphs 38 and 39 of the IPOA-IUU deal with fishing vessels ‘flag-hopping’ or reflagging to avoid being under the jurisdiction of a State that takes its flag State obligations seriously – by calling on States to deter fishing vessels from reflagging, by establishing uniform registration and fisheries management standards among countries to avoid creating incentives to reflag from one to another, by denying fishing authorisations and (for the State to which the vessel is seeking to reflag) by denying the entitlement to fly that State’s flag. Paragraphs 74–75 above in the AUS-NPOA-IUU deal with vessels wanting to reflag to Australia and paragraph 38 above suggests ways to discourage reflagging from Australia to another country. Furthermore, the SRA 1981 provides for a ship to be seized or detained or to have its registration cancelled in certain circumstances (currently unrelated to fisheries issues), in which case the ship cannot be cleared by Customs for departure from Australia. In addition, an unregistered ship cannot depart from Australia. Accordingly, there may be a case for the SRA 1981 to be amended to explicitly provide for seizure, detention or registration cancellation of a fishing vessel for fisheries-related reasons so as to effectively prevent its reflagging in certain circumstances.

75. Currently, s 16A(1) of the FMA 1991 proscribes fishing on the high seas for straddling or highly migratory fish stocks from an Australian-flagged boat for any period for which there is a matter outstanding (such as the non-payment of a fine) arising from a conviction of an offence (such as for non-compliance with the 1995 UN Fish Stocks Agreement) by a person involving the use of the boat. However, there is no corresponding requirement for the *registration* of the boat to be withdrawn or suspended. Until measures such as those suggested in paragraph 74 above are implemented, there is nothing in Australian law to stop the boat’s owners or agents from having the boat leave Australia and being reflagged so as to re-commence fishing outside Australian jurisdiction under a foreign flag-of-convenience.

76. Paragraphs 40 and 41 of the IPOA-IUU call on States to better coordinate their national fisheries and maritime administrations, so as to prevent inconsistencies between them that may limit a country’s ability to combat IUU fishing – for example that a decision to register a fishing vessel should be conditional on the vessel’s being entitled to obtain an authorisation to fish in waters under the jurisdiction of that State or of another State. In Australia, as the FMA 1991 and SRA 1981 currently stand, there is no formal, legal conditionality linking these two decisions. Although Australia’s primary concerns in combating IUU fishing relate to foreign fishing vessels, there would be merit in reviewing the FMA 1991 and SRA 1981 and strengthening the day-to-day working arrangements between AFMA and AMSA so as to give direct effect to paragraphs 40 and 41 of the IPOA-IUU.

Record of Fishing Vessels (IPOA-IUU paragraphs 42–43)

77. Under s 29 of the SRA 1981, all registered ships and all Australian-owned ships that are unregistered by virtue of the exemptions from mandatory registration in s 13, together with ships that are wholly owned or solely operated by Australian residents and/or nationals, are taken to be Australian ships and to have Australian nationality. Therefore, all Australian-owned and/or operated fishing vessels, whether registered

because they intend to operate beyond Australia’s territorial sea, or unregistered under s 13 of the SRA 1981 (but accordingly limited by s 68 of the SRA 1981 to operate inside the territorial sea), have Australian nationality and are entitled to fly an Australian flag.

78. Under the SRA 1981 and the *Shipping Registration Regulations 1981*, the following information must be recorded in the particulars required to be entered into the Register for all registered ships (including registered fishing vessels, whether intending to fish on the high seas or in waters of national jurisdiction):

- (a) consistent with paragraphs 1 and 2 of Article VI of the FAO Compliance Agreement (other than subparagraph 2(b) which refers to the type of fishing method/s of the vessel) and with paragraphs 42 and 43 of the IPOA-IUU (other than concerning any known history of non-compliance with fisheries management measures referred to in IPOA-IUU subparagraph 42.5 or a photograph of the vessel referred to in subparagraph 42.6):
- name of the vessel; unique vessel identification number (which, if the vessel has been previously registered, must be the previous number)³⁵; and home port;
 - if previously registered in Australia or elsewhere – the previous registered name/s; previous home port/s; previous identification number/s; and previous place/s of registration (and thus previous flag/s);
 - radio call sign (if any); names, addresses and nationalities of all persons (natural or corporate) to whom the vessel belongs and the extent of each person’s interest in the vessel;
 - type, length and year of completion of vessel;
 - if previously unregistered in Australia – the builder’s name; the place of construction; and the builder’s identification for (or name of) the vessel;
 - the name and address of the vessel’s registered agent (one of the vessel’s operators, charterers or managers as the case may be)
 - the vessel’s moulded depth amidships, maximum breadth and other dimensions;
 - the vessel’s gross and net or register tonnages; and the vessel’s power (brake, indicated or shaft power, as applicable); and
- (b) other details required for registration in Australia relevant to this AUS-NPOA-IUU, including:
- proper marking of the vessel, as prescribed in regulations, including its name, identification number and home port;
 - details of any transfer of the whole or any partial ownership of the vessel;
 - in the case of foreign vessels under demise charter to Australian-based operators – a copy of the charterparty and other details generally consistent with the details required for the registration of Australian-owned vessels as outlined herein, including the names, addresses and nationalities of the charterers and the extent of each charterer’s interest in the chartered vessel;
 - where appropriate, information as to in what respects the vessel’s present description differs from any previously registered description of the vessel;

³⁵ Where not already in use, there are clear advantages in using the IMO/Lloyds system of vessel identification.

- the vessel's speed and method of propulsion and number of decks, masts, bulkheads, etc;
- details of all mortgages (and other caveats) over the vessel, including the names, addresses and nationalities of all mortgagees and details of the discharge of any mortgage; and
- evidence of title to the vessel, such as a bill of sale, if it was previously registered by another country.

(c) other details required under the FMA 1991 and related fisheries regulations for authorisations to fish:

- a register of fishing permits, including the names and distinguishing markings of the vessels;
- a register of statutory fishing rights, including the names of vessels; and
- foreign fishing vessels seeking Australian authorisation to fish for tuna must be listed on the FFA register of vessels in good standing (see *Annex 7*).

79. Under the SRA 1981 and the FMA 1991, the information referred to above is required to be included in the record of Australian flagged and registered fishing vessels whether or not they are authorised to fish on the high seas. The only exceptions to this are fishing vessels which choose, under s 13 of the SRA 1981, not to seek registration and are accordingly limited to fishing within the outer limits of Australia's territorial sea. Fishing operations using these vessels are nevertheless subject to applicable national, state or territory fisheries law and regulations.

Authorisation to Fish (IPOA-IUU paragraphs 44–50)

80. These paragraphs of the IPOA-IUU call for a range of measures relating to the authorisation of *fishing vessels* in order to combat IUU fishing on the high seas and in waters of national jurisdiction. Australian fisheries management law and regulations operate primarily on the basis of regulating *persons*, rather than vessels.³⁶ For example, the major nationally-managed fisheries allocate fishing concessions (in the form of statutory fishing rights, fishing permits or – in certain circumstances – foreign fishing licences) to persons. Authorisations, permits and other conditions regulating fishing under those fishing concessions apply to the concession-holders and to other persons who may be engaged in fishing or related activities as agents or employees of the concession-holders. In some cases, however, the FMA 1991 (for example, in s 21(2)) and the regulations may provide for the authorisation of fishing by or from a particular Australian (or, in some cases, foreign) fishing vessel.

81. The FMA 1991 (s 32) does involve the authorisation of a particular fishing vessel in relation to the grant of a fishing *permit* for 'fishing in a specified area of the AFZ or a specified fishery'. Moreover, the boat must comply (s 32(1C)) with any conditions to which the permit is subject. In addition, s 32(3) provides for AFMA to refuse a permit if it has reason to believe that a national or state law has not been complied with in relation to the boat. Fishing concessions in the form of *statutory fishing rights* are, however, not

³⁶ In general, unless the context indicates otherwise, *person* includes both a *natural person* (including, where relevant, a foreign person) and a *legal 'person'* established under relevant company or corporate law.

necessarily subject to the same requirements regarding fishing vessels. Some state-managed fisheries in Australia (for example, in South Australia) require a fishing licence to be endorsed with the details of the fishing vessel being employed under the licence and of the vessel's Master.

82. Fishing by traditional Indonesian fishers in the 'MoU Box' area in the north western section of the AFZ is by agreement currently not effectively subject to Australian fisheries law (for details see paragraph 11 of this document). IUU fishing in the MoU Box and adjacent waters is, however, now of serious concern to Australia and the arrangements associated with the MoU (and with fishing in northern waters generally) are currently under review. Requiring all vessels (including foreign vessels) that fish in the area to be authorised to do so is one option under consideration.³⁷

83. IPOA-IUU paragraph 45 relates (for Australia) to an Australian-flagged fishing vessel fishing outside Australia's sovereignty or jurisdiction and calls for such a vessel to have been authorised by Australia to fish there. The paragraph also calls for fishing within the jurisdiction of a coastal State to require the authorisation of both the coastal State and the vessel's flag State (if different from the coastal State). Division 5A of the FMA 1991 deals with these issues and is not limited to highly migratory or straddling fish stocks. Under this Division, it is an offence, unless so authorised by Australia, for a person on an Australian-flagged boat on the high seas to possess or have control of fish or for the boat to be equipped for fishing. The Division also makes it an offence for a person to intentionally use an Australian-flagged boat to fish in the area of jurisdiction of another country if the law of that country requires such fishing to be authorised and no authorisation has been obtained. The Division does not also explicitly require the fisher to actually fish in accordance with the foreign country's authorisation. Nor does it require the fisher or boat to also hold an *Australian* authorisation to fish in the foreign waters.

84. In the case of Australia as the coastal State, a foreign fishing vessel must not fish or be equipped for fishing in any part of Australia's waters unless so authorised (FMA 1991 ss 100 to 101B), but the FMA 1991 does not require the fisher or vessel to be also authorised to fish by the foreign flag State. Since very few foreign fishing vessels are authorised by Australia to fish in Australian waters, and that any that are so authorised come under specific bilateral agreements or arrangements between Australia and the flag State, the requirement for both a coastal State and flag State authorisation is more appropriately left for negotiation within the bilateral agreement rather than being specified in the FMA 1991.

85. Paragraphs 46 and 47 of the IPOA-IUU set out the specific information that should (para 46) or may (para 47) be included in a vessel's authorisation to fish. As already mentioned, the FMA 1991 authorises *persons* rather than vessels (but may also require a specific fishing vessel to be used or nominated). Under s 32 of the FMA 1991, fishing permits for fishing in the AFZ by Australian boats must specify the person (natural or legal) to whom the permit applies and the specific area or fishery to which the permit applies. The permit may be subject to 'such other conditions as are specified in the

³⁷ Recognising the potentially severe social and economic impacts on isolated Indonesian coastal communities, efforts have been made and are continuing to assist the development of 'alternative livelihoods' projects.

permit' or otherwise prescribed (s 32(6)). Other subsections provide that the permit may include:

- whether the vessel is permitted to fish commercially, or recreationally or on charter;
- the specific fishing or fishery-related activities (including the carrying or processing of fish or the testing of fishing equipment) that are authorised;
- a requirement to fish in accordance with and only during the existence of any plan of management for the relevant fishery;
- the period for which the permit is in effect; and
- conditions regarding the type and quantity of fish that may be taken, the rate at which it may be taken, and the methods or equipment that may be used to take, process or carry the fish.

86. With respect to the application in Australian fisheries of the specific provisions, where required, of sub-paragraphs 47.1–47.10 of the IPOA-IUU:

- there are currently approximately 480 authorised fishing vessels operating VMS in nationally-managed fisheries;
- daily catch and effort log-books provide time series of vessels' fishing statistics, including fishing location, total catch by number and weight and discard data;
- with limited exceptions (see paragraph 87 below), trans-shipping of catch from fishing vessels is prohibited;
- for fisheries where observers are required, the obligation to do so is included as a condition in the operator's authorisation;
- fishing vessels are subject to Australia's maritime laws in relation to navigational and safety equipment which – together with VMS and applicable environment protection laws – ensures they are capable of complying with conditions regarding authorised and restricted areas and with recognised standards for safety and marine environment protection;
- fishing vessels are required to be marked in accordance with the FAO Standard Specification and Guidelines;
- other aspects of fisheries management, such as observance with the conditions in marine protected areas and other marine protection requirements, are also enforced in Australia, by AFMA and/or other regulatory authorities; and
- all fishing vessels authorised by Australia must have and display a unique identification number.

87. Australian fisheries are predominantly fished using fishing vessels that do not require or use support vessels and trans-shipment of catch from fishing vessels is prohibited other than as outlined in this paragraph. To the limited extent that foreign fishing (or support) vessels seek to be resupplied from Australia, they do so by seeking entry to ports and not at sea from resupply vessels operating from Australia. Under these circumstances, the extent of support from Australia of foreign vessels engaged in or supporting IUU fishing is negligible. Fishers in the eastern tuna and billfish fishery have sought permission to trans-ship catch between vessels owned and operated by the same company. This request is being examined on the basis that stringent conditions

would apply – such as prohibiting the unloading of the catch other than in an Australian port, where the catch would be subject to full scale monitoring. In the northern prawn fishery, mother ships which service the fishing vessels require authorisations to operate, including permits to carry any catch transferred to them. In other fisheries, such as for southern bluefin tuna and on the high seas, all fishing support activities require prior approval by AFMA. There are no legal or policy impediments to catch and trans-shipment data being reported in a ‘full, timely and regular manner’ to FAO and other international organisations, provided the data are aggregated sufficiently to protect commercially sensitive information.

Further Actions by Australia Under IPOA-IUU paragraphs 34–50

Australia will:

- Consider whether the SRA 1981 should be amended to provide for the detention of an Australian-flagged fishing vessel or the suspension or cancellation of its registration so as to prevent its being reflagged to a State that is unlikely to exercise effective flag State control of the vessel, as discussed in paragraphs 39 and 74.
- Consider reviewing the FMA 1991 and SRA 1981 and strengthening the day-to-day working arrangements between AFMA and AMSA so as to give direct effect to paragraphs 40 and 41 of the IPOA-IUU.
- Review the FMA 1991 to provide, for all classes of fishing concessions, that the granting of an authorisation to fish to a concession-holder should explicitly include conditions in relation to the use of an authorised fishing vessel, as discussed in paragraphs 80–81.
- In the context of the review of fishing by Indonesian traditional fishers in the ‘MoU Box’, consider implementing new, strengthened measures for effective fisheries management in that area and associated northern waters.
- Consider whether an Australian flagged fishing vessel in waters under the jurisdiction of a foreign State should act in accordance with the laws of that State while also being authorised to fish by Australia.
- In the context of an increasing intensity in foreign fishing vessel deployment under international agreements, consider whether authorisations for foreign fishing vessels to fish, or to be equipped for fishing, in the AFZ should be issued by both Australia and the relevant flag State.
- Ensure that any new proposals involving the operation under Australian jurisdiction of fishing support vessels (for example, for trans-shipment or resupply) are, if approved, made subject to stringent conditions, including prior approval, so as to avoid their use in support of IUU fishing.

Coastal State Measures (IPOA-IUU paragraph 51)

88. The vast majority of fishing in Australian waters is by Australian fishing vessels, which is covered under the flag State (and all State) obligations outlined above. To the extent that fishing within Australian waters is also subject to regional or global fisheries management agreements or arrangements, such as CCAMLR conservation measures applicable in the AFZ around Heard Island and McDonald Islands (HIMI) in the sub-Antarctic or the provisions of the 1995 UN Fish Stocks Agreement or the FAO Compliance Agreement, Australian compliance with those agreements and arrangements ensures compliance with the specific provisions of paragraph 51 of the IPOA-IUU.

89. With one exception, there are currently no agreements or arrangements under which foreign fishing vessels are authorised to fish in Australian waters, with Australia exercising the role of a coastal State. Any such fishing is therefore contrary to Australian fisheries law. The taking of Patagonian toothfish in HIMI by foreign fishing vessels is the most notorious case of this IUU fishing and Australia continues a major program of surveillance and apprehension of such vessels. This program has been strengthened since the late 1990s, with the use of armed Australian naval vessels, regular patrols of the HIMI region by civil patrol vessels (which are now armed – see paragraph 69), cooperation between Australia and other CCAMLR members, especially South Africa, France and the UK, in the hot pursuit, apprehension and prosecution of these vessels and their owners, masters and crew and intensified bilateral negotiations with prospective port States to dissuade them from landing catch unless CCAMLR measures – such as the catch documentation scheme for toothfish – have been complied with.

90. The exception involves fishing in the ‘MoU Box’ by traditional Indonesian fishers, as referred to in paragraph 11 above and for which a review is under way with a view to reducing the level of IUU fishing now associated with MoU Box arrangements.

Port State Measures (IPOA-IUU paragraphs 52–64)

91. Subject to its obligations under applicable international law, a port State has freedom to implement port State measures at its discretion with respect to foreign vessels, including foreign fishing vessels, that it allows to enter its ports. These port State measures may include measures arising from international maritime conventions and agreements, including – in Australia’s case – regional port State measures under the *Memorandum of Understanding on Port State Control in the Asia-Pacific Region* (‘Tokyo MoU’). With the exception, however, of some aspects of vessel safety in Chapter V of the *International Convention for the Safety of Life at Sea* (‘SOLAS’), port State measures derived from maritime law do not apply to fishing vessels and – even if they did – would not deal explicitly with fisheries management violations.

92. Australia has been working, with other countries, including through FAO and IMO, to review port State measures on the international plane with the object of providing for the implementation of port State measures that could assist in combating IUU fishing. An Australian expert participated in an *Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing* (FAO, Rome, November 2002) and Australia will participate in a *Technical Consultation to Address Substantive*

Issues Relating to the Role of the Port State to Prevent, Deter and Eliminate IUU (Illegal, Unreported and Unregulated) Fishing, in Rome in September 2004. In principle, there is no reason why a system of regional MoUs on port State measures to combat IUU fishing could not be developed and adopted.³⁸

93. Domestically, Australia restricts port access by and the landing of catch from foreign fishing vessels to combat IUU fishing. In summary, the current requirements are for foreign fishing vessels to seek prior permission to enter any Australian port (except in cases of *force majeure* or distress) and to obtain separate Ministerial level approval to be exempt from a general prohibition on landing catch. Applicants for foreign fishing vessel port access or catch landing are required to give reasonable notice and to provide other information generally consistent with IPOA-IUU paragraph 55. In recent years, some foreign fishing vessels suspected by Australia to have engaged in IUU fishing, having initially sought port access in Australia and having been asked to provide details as to their catch, subsequently decided not to pursue gaining port access any further. Also, on several occasions, Australian fisheries authorities and fishers have photographed foreign fishing vessels suspected of IUU fishing on the high seas sector of the CCAMLR area and passed this and related information to the CCAMLR secretariat for use in making representations to port States where these vessels may seek port access. Australian diplomatic representations have supported these actions to close ports and markets to IUU catches.

94. On 29 January 2004, the Australian Minister for Fisheries, Forestry and Conservation announced a review of Australia's policy on the landing in Australia of catch from foreign fishing vessels and new applications to land catch will only be granted in exceptional circumstances until the review is completed. Current port access guidelines for foreign fishing vessels will also be reviewed. The review will take account of Australia's overall objectives to better combat IUU fishing, including the provisions in paragraphs 52–64 of the IPOA-IUU. One specific approach to be considered in relation both to port access by foreign fishing vessels and the landing of catch from such vessels is to decide that approval for either of these purposes will in future be limited to vessels flagged to States whose intention to implement effective flag State control over their vessels is demonstrated by their having become party to all relevant global and regional international agreements.

Further Actions by Australia Under IPOA-IUU paragraphs 52–64

Australia will:

- Continue to take a leading role in FAO, the IMO and relevant RFMOs in pressing for strengthened port State measures, including the development of regional MoUs, to combat IUU Fishing.
- Complete (and implement as appropriate the recommendations from) the current review of Australia's policy and procedures for access to its ports by and the landing of catch from foreign fishing vessels, having regard to the need to combat IUU fishing.

³⁸ A system of regional port State measures dealing with IUU fishing could strengthen the present ad hoc arrangements where, for example, Australia and other CCAMLR members have pressed individual Indian Ocean port States to close their ports to fishing vessels believed to have taken Patagonian toothfish without authorisation.

Internationally Agreed Market-Related Measures (IPOA-IUU paragraphs 65–76)

95. Australia's current port State measures (see paragraphs 91–94 above), particularly for the landing of catch from foreign fishing vessels, have potential market-related implications. However, given the very small quantities of fish which foreign fishing vessel operators have sought to land in Australia, the actual market-related implications have to date been insignificant. Nevertheless, the review referred to in paragraph 94 above will take account of Australia's obligations under WTO rules.

96. As an active participant in the RFMOs to which it belongs, Australia has taken an increasing interest in RFMO processes to identify fishing vessels believed to have engaged in IUU fishing. This has involved the preparation of IUU vessel lists of such vessels as well as 'authorised lists' of fishing vessels believed to be in good standing and to have not engaged in IUU fishing. As outlined in paragraph 45, CCAMLR recently agreed a proposal put forward by Australia to improve its IUU Vessels List for Contracting Parties and establish a list of vessels authorised to fish in the CCAMLR Area. On the basis of these and related actions, Australia is preventing the product of IUU fishing of vessels on IUU vessel lists from entering its own domestic market and is working bilaterally and regionally to persuade other port and importing States to do likewise. For example, Australian representations to Mauritius over several years has largely led to Mauritius acceding to the CAMLR Convention. This means Mauritius will take steps to ensure boats without proper licensing documentation, without Catch Documentation Scheme papers (see paragraph 98 below), or without effective flag State control will be refused unloading and support facilities in Mauritius.

97. Actions by Australia, and the RFMOs to which it belongs, to implement trade-related measures to curb IUU fishing are summarised in *Annex 6*. The implementation of these measures has been consistent with the processes of consultation, non-discrimination, transparency, etc, as required by paragraphs 66–68 of the IPOA-IUU.

98. In particular, Australia has participated in CCAMLR in the adoption, implementation and ongoing strengthening of a Catch Documentation Scheme (CDS) for Patagonian toothfish. Australia has supported the USA in its pursuit of an electronic CDS (eCDS) to strengthen the integrity of the scheme and has participated in trials of the eCDS over recent years. Australia has also assisted CCAMLR member countries such as South Africa and non-members such as Mauritius and Namibia to participate in the CDS as port States by providing technical training for their fisheries officers and is actively seeking to assist Indonesia in similar ways. The CCAMLR CDS is, however, less effective than Australia and many member States would want, due to a minority of member States opposing changes that would improve CDS effectiveness and because some relevant flag, port and market States are not fully cooperating in the scheme. Australia will continue to seek improvements to the CDS and related measures, including adoption of the eCDS and in closing the 'loophole' that arises from the opportunity for IUU fishers to claim their catch was taken in waters outside CCAMLR's (geographically defined) region of jurisdiction.

99. In the CCSBT Australia led the development and implementation from June 2000 of an SBT Trade Information Scheme (TIS). The TIS aims to collect accurate and comprehensive data on SBT fishing through monitoring trade. The TIS also operates to deter IUU fishing by effectively denying access to markets for SBT. Under the TIS, members of the CCSBT require all imports of SBT to be accompanied by a completed CCSBT Statistical Document. The Document must be endorsed by an authorised competent authority in the exporting country and includes extensive details of the shipment such as name of fishing vessel, gear type, area of catch, dates, etc. Shipments not accompanied by this form must be denied entry by the member country. Completed forms are lodged with the CCSBT Secretariat and are used to maintain a database for monitoring catches and trade. Recently, the TIS was amended to require the Document to include the country of destination and to set minimum standards for completion of TIS documentation. The requirement to include the destination country was made in the light of markets for SBT developing outside CCSBT members.

100. The CCSBT is also seeking the agreement of non-member SBT-importing countries to participate in the TIS. To date, the United States has indicated it will cooperate, probably by adapting existing document controls developed for imports of northern bluefin tuna. The Philippines has also agreed to cooperate. At present, the TIS does not require documentation of SBT 'imported' into the flag State of the vessel from which the catch was made. Australia will continue to urge the CCSBT to amend the TIS to remove this 'loophole' in the Scheme.

101. Since early 2003, Australian catches of swordfish imported into Japan or the USA must be accompanied by statistical catch documentation that licensed fish receivers in those countries may use to validate the catches' compliance with import requirements in relation to exceeding minimum size limits, etc. These arrangements are broadly based on the ICCAT version of the TIS, upon which the SBT TIS was itself based. Since swordfish taken by Australian flagged vessels are not caught in the ICCAT convention area, the documents from Australia will serve to certify that these swordfish do not contravene any ICCAT conservation and management measures.

102. Shipments of Australian prawns to the USA must also be accompanied by trade-related documentation, certifying (among other things) the use of authorised turtle excluder devices (TEDs) on all vessels used in making the catches.

103. In order to instil uniformity and a standard approach across all Australian jurisdictions the National Docketing Scheme (NDS) has been developed by the National Fisheries Compliance Committee (a body made up of senior fisheries compliance officers from all jurisdictions). This system, which creates a standardised audit trail of purchase and sale documentation for all fish, with special requirements for abalone and rock lobster, and marine products within Australia, assists national and state efforts to combat IUU fishing. This system is currently in the process of being implemented by all jurisdictions³⁹. Participation by Australian states in national plans of action for sharks and seabirds (see *Annex 3*) has trade-related implications in some cases, such as in preventing trade in shark fins.

³⁹ In NSW, for example, the NDS is to be given statutory effect through amendments to fisheries regulations, which will formally apply labelling requirements to all forms of abalone and rock lobster that leave a processing operation.

104. Given the limited extent of IUU fishing involving Australian-based operators – other than in the mainly criminal activities of domestic groups involved in illegal abalone and rock lobster fishing and trafficking discussed elsewhere in the AUS-NPOA-IUU – there has been little need to date to respond in Australia to the provisions of IPOA paragraphs 73 and 74, which call for action against importers, trans-shippers, buyers, consumers, bankers and others who may do business with IUU fishers or engage in activities that support IUU fishing. There is, however, a need to keep the situation under close watch so that action may be initiated quickly should it become necessary.

105. Australia operates an export commodity description system, the Australian Harmonised Export Commodity Classification (AHECC) system, which is based closely on the six-digit Harmonised Commodity Description and Coding System (HCDCS) of the World Customs Organisation for describing internationally traded goods. Australia extends the six digit international system by two digits to provide a finer level of detail to meet Australian statistical requirements. Fish and fish products exported from Australia are classified under the AHECC.⁴⁰

Further Actions by Australia Under IPOA-IUU paragraphs 65–76

Australia will:

- Continue to take a leading role in relevant RFMOs, particularly in CCAMLR and CCSBT, in pressing for strengthened market-related measures to combat IUU fishing.
- Ensure that measures to prevent the traders and service suppliers referred to in IPOA-IUU paragraphs 73 and 74 from doing business with IUU fishers or supporting IUU fishing will be brought into effect quickly, should they be required.

Research (IPOA-IUU paragraph 77)

106. Australian scientists are developing forms of ‘genetic fingerprinting’ to enable different tuna species (such as bigeye tuna and southern bluefin tuna) to be distinguished from each other. Queensland is sponsoring DNA research which aims to distinguish between ‘fillets’ of the various reef species, which is of increased importance as these species become subject to quota-based management. WA is conducting compliance research on shark to identify individual species through DNA analysis, so they may be detected in the processing chain and to provide evidentiary proof in prosecutions. Other research under way or proposed in Australia relevant to combating IUU fishing includes a two year benchmarking study to assess fisheries compliance programs in each national and state jurisdiction, in a national and international context, to determine best practices in fisheries compliance. Developed through the NFCC, the study has the support of the AFMF. The study will result in recommendations for more consistent, efficient and effective fisheries compliance service delivery across all fisheries jurisdictions in Australia. In the light of concern at the level of illegal capture

⁴⁰ For example, southern bluefin tuna is classified separately as fresh or chilled excluding fillets (0302.36.00), or frozen excluding fillets (0303.46.00), or as fillets (0304.90.10) and toothfish (*Dissostichus* spp.) as frozen excluding fillets (0303.79.12) or as fillets (0304.20.01).

and marketing of inland native fish, particularly in the Murray-Darling river systems, the four states most affected (Victoria, New South Wales, Queensland and South Australia) organised a workshop in May 2003 to develop a cross-jurisdictional compliance strategy for sharing intelligence, technology and innovative legislative proposals. A draft strategy has since been endorsed by the NFCC. An inter-state steering committee has been appointed to implement the strategy and the outcomes of a program of joint strategic operations will be assessed in late 2004.

Regional Fisheries Management Organisations (IPOA-IUU paragraphs 78–84)

107. Australia is party to and an active member of the RFMOs (or their equivalents) established by the following conventions or agreements: CCSBT, IOTC, CCAMLR, WCPFC and the FFA.

108. Australia will continue to act in these RFMOs to implement binding measures to combat IUU fishing. In most cases, Australian domestic laws and regulations have been amended to give effect to such measures.⁴¹ Australia has been particularly active in the international negotiations for the establishment of the WCPFC and for a proposed high seas fisheries management organisation for the southern Indian Ocean (for species not included in the scope of the IOTC). To date, fishing by Australian flagged vessels and/or nationals in waters and for species subject to the jurisdiction of RFMOs to which Australia is not a party has not arisen to any extent. Against this possibility in future, however, Australia should consider prohibiting such fishing without explicit Australian approval, which would require conformity with the conservation and management measures of the relevant RFMO.

109. Australia has worked within the RFMOs to which it belongs to strengthen measures and institutional arrangements to combat IUU fishing and to exchange relevant information on IUU fishing with other RFMOs and FAO in accordance with paragraphs 80, 81 and 82 of the IPOA-IUU. A summary of the outcomes of this work is provided at *Annex 6*.

110. Several countries and fishing entities not originally party to the CCSBT, particularly Indonesia, Korea and Taiwan, were of concern to Australia and other CCSBT parties because of their significant unregulated and unreported catches of SBT. Through the CCSBT, they were invited to attend meetings of the Commission and a detailed strategy was developed to encourage them to become party to the CCSBT or to fish in accordance with CCSBT conservation and management measures. In October 2001 the Republic of Korea joined the Commission and Taiwan's membership of an 'extended Commission' became effective in August 2002. In October 2003, the CCSBT agreed to invite countries with an interest in the fishery to participate in its activities as cooperating non-members. Cooperating non-members participate fully in the business of the CCSBT but cannot vote. Acceptance as a cooperating non-member requires adherence to the management and conservation objectives of the CCSBT, including agreed national catch limits within a

⁴¹ For example, Australian-flagged fishing vessels operating in the HIMI, Macquarie Island and CCAMLR (new and exploratory) fisheries are subject to s105 of the FMA 1991. Specific arrangements for these fisheries include the HIMI Management Plan 2002 and conditions on permits for the other fisheries pending the development of management plans. These provisions in domestic law encompass (and in general exceed) the requirements of current CCAMLR conservation measures.

global TAC. Cooperating non-member status is regarded as a transitional measure to full membership and accession to the Convention. Indonesia, the Philippines and South Africa have indicated their desire to become cooperating non-members and will be invited to apply for admission on that basis in 2004.

111. CCAMLR has developed several conservation measures seeking to combat IUU fishing (see *Annex 6*). These measures include at-sea inspections – by designated observers – of Contracting Party vessels fishing in the CCAMLR region, the use of scientific observers to collect essential scientific data and to promote CCAMLR objectives, the CDS for *Dissostichus* spp. which tracks landings and trade in toothfish and seeks to restrict access to markets for toothfish taken in IUU fishing operations, the marking of vessels licensed to fish in the CCAMLR region and their fishing gear, a satellite-based, centralised VMS and mandatory port inspections by Contracting Parties of the vessels they licence to fish in the region.

112. Additional conservation measures have been proposed by Australia and other like-minded members and recently agreed by CCAMLR. These included the adoption of a centralised VMS, improvements to the CCAMLR IUU Vessel List for Contracting Parties (now publicly available) and establishment of a publicly available list of vessels licensed by Contracting Parties to participate in CCAMLR fisheries. Other proposals to strengthen CCAMLR conservation measures have failed to achieve consensus in the Commission. For example, an electronic version the CCAMLR CDS for toothfish (eCDS), designed to eliminate fraudulent documentation, has been successfully trialled for the past two years. While stopping short of agreeing to full implementation, the Commission passed a resolution urging Members to adopt the electronic system as a matter of priority.

113. Australia recognises that RFMO member States (or the States negotiating a new RFMO agreement) may have difficulty in deciding whether other States, particularly ‘distant water fishing nations’, seeking participation in the RFMO should be invited to do so. There is a possibility that States excluded from full participation in an RFMO and thereby denied access to the fisheries under the management arrangements of that RFMO may fail to prevent fishing vessels flying their flags or their nationals from engaging in IUU fishing in the RFMO’s region of competence. Australia will pay close attention to this issue in its further work within the RFMOs to which it belongs or which it is engaged in creating with a view to reducing the incidence of IUU fishing while also complying with its UNCLOS (and related) obligations under international law.

Further Actions by Australia Under IPOA-IUU paragraphs 78–84

Australia will:

- Work within the RFMOs to which it is party to develop their own regional plans of action to combat IUU fishing.
- Work within relevant RFMOs to ensure decision-making rules and procedures do not prevent them from taking effective action against member States (or cooperating non-members) which fail to address cases of IUU fishing within the areas of competence of the RFMOs by vessels flying their flags or by their nationals.
- Cooperate, as necessary, with RFMOs to which Australia is not party and amend domestic legislation, if appropriate, to ensure Australian flagged vessels and Australian nationals are prohibited from fishing in waters and for species under the jurisdiction of those RFMOs other than in conformity with their conservation and management measures.
- Seek to minimise the incidence of IUU fishing by States and fishing entities with a real interest in fisheries being managed through existing or proposed RFMO agreements and arrangements, particularly by encouraging such States to participate fully in the work of such RFMOs and by supporting their right to do so under international law.
- Work to encourage States not party to relevant RFMOs to become so and/or to cooperate with them.
- Work to strengthen CCAMLR conservation measures by the adoption and full implementation of a centralised VMS, the operation of an electronic form of the CDS and the investigation of a more robust boarding and inspection regime.
- Seek to strengthen observer programs in the IOTC (see Annex 6).

V. Special Requirements of Developing Countries

IPOA-IUU paragraphs 85 and 86

114. As a developed country within the Asia-Pacific region, Australia recognises the special needs of developing countries in implementing effective measures for responsible fisheries management, particularly to combat IUU fishing. Within a long-standing policy of giving priority in its official development assistance (ODA) programs to developing countries, especially small island developing States, in the Asia-Pacific region, Australian ODA for fisheries management has concentrated on the needs of Pacific Island States, including through the Forum Fisheries Agency (FFA) of the Pacific Community and the Oceanic Fisheries Program (OFP) of the Secretariat of the Pacific Community. A summary of Australia's support for these agencies and programs is at *Annex 7*. A particular focus in this assistance has been on supporting and improving the MCS capabilities of developing countries.

115. Australia also supports responsible fisheries management initiatives and programs through APEC and in several Asian countries, including Indonesia, the Philippines, and other east and south east Asian nations. Australia is currently implementing a joint fisheries management capacity-building project with Indonesia, as well as several joint research activities.

116. A major project by the Australian Centre for International Agricultural Research (ACIAR) is providing almost \$400,000 over three years for the development of management and policy frameworks to combat IUU fishing in Indonesian and Philippine waters. The project will encourage greater bilateral cooperation and consultation on IUU fishing, facilitate policy reform, develop new legislative frameworks and assist in the development of a regional plan of action to combat IUU fishing.

117. Australia has also assisted CCAMLR member countries such as South Africa and non-members such as Mauritius and Namibia to participate in the CCAMLR CDS as port States by providing technical training for their fisheries officers.

VI. Reporting

IPOA-IUU paragraph 87

118. Australia will report to FAO on progress in implementing and further developing the AUS-NPOA-IUU as a part of its biennial reporting on the Code of Conduct. The AUS-NPOA-IUU is necessarily an ongoing work-in-progress, as IUU continues to evolve and as the national, state and territory governments in Australia develop new strategies to prevent, deter and eliminate IUU fishing.

119. The AUS-NPOA-IUU will also be available more generally for interested persons through its being placed on the website of the Australian Government Department of Agriculture, Fisheries and Forestry (www.daff.gov.au/).

ANNEX 1 – INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING (IPOA-IUU) AND RELATED DOCUMENTS

This Annex includes:

- Annex 1.1 – the IPOA-IUU;
- Annex 1.2 – Australia’s statement on IUU fishing to the FAO Committee on Fisheries in 2003;
- Annex 1.3 – a Glossary of relevant abbreviations and acronyms;
- Annex 1.4 – the objectives of Australia’s *Fisheries Management Act 1991*; and
- Annex 1.5 – internet addresses for Australian fisheries and related agencies regarding IUU fishing.

Annex 1.1 – The IPOA-IUU

Note: the authoritative version of the IPOA-IUU may be seen on and downloaded from the FAO website at <http://www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM>. For ease of reference, the main sections of the text are repeated in this Annex.

INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

I. INTRODUCTION

1. In the context of the Code of Conduct for Responsible Fisheries and its overall objective of sustainable fisheries, the issue of illegal, unreported and unregulated (IUU) fishing in world fisheries is of serious and increasing concern. IUU fishing undermines efforts to conserve and manage fish stocks in all capture fisheries. When confronted with IUU fishing, national and regional fisheries management organisations can fail to achieve management goals. This situation leads to the loss of both short and long-term social and economic opportunities and to negative effects on food security and environmental protection. IUU fishing can lead to the collapse of a fishery or seriously impair efforts to rebuild stocks that have already been depleted. Existing international instruments addressing IUU fishing have not been effective due to a lack of political will, priority, capacity and resources to ratify or accede to and implement them.

2. The Twenty-third Session of the FAO Committee on Fisheries (COFI) in February 1999 addressed the need to prevent, deter and eliminate IUU fishing. The Committee was concerned about information presented indicating increases in IUU fishing, including fishing vessels flying ‘flags of convenience’. Shortly afterwards, an FAO Ministerial Meeting on Fisheries in March 1999 declared that, without prejudice to the rights and obligations of States under international law, FAO ‘will develop a global plan of action to deal effectively with all forms of illegal, unregulated and unreported fishing including fishing vessels flying ‘flags of convenience’ through coordinated efforts by States, FAO,

relevant regional fisheries management bodies and other relevant international agencies such as the International Maritime Organisation (IMO), as provided in Article IV of the Code of Conduct. The Government of Australia, in cooperation with FAO, organised an Expert Consultation on Illegal, Unreported and Unregulated Fishing in Sydney, Australia, from 15 to 19 May 2000. Subsequently, an FAO Technical Consultation on Illegal, Unreported and Unregulated Fishing was held in Rome from 2 to 6 October 2000 and a further Technical Consultation was held in Rome from 22 to 23 February 2001. The draft International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was adopted by the Consultation on 23 February 2001 with a request that the report be submitted to the Twenty-fourth Session of COFI for consideration and eventual adoption. COFI approved the International Plan of Action, by consensus, on 2 March 2001. In doing so, the Committee urged all Members to take the necessary steps to effectively implement the International Plan of Action.

II. NATURE AND SCOPE OF IUU FISHING AND THE INTERNATIONAL PLAN OF ACTION

3. In this document:

3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation.

3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

3.2.2 undertaken in the area of competence of a relevant regional fisheries management organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organisation that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).

4. The IPOA is voluntary. It has been elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries as envisaged by Article 2 (d).

5. The FAO Code of Conduct for Responsible Fisheries, in particular Articles 1.1, 1.2, 3.1, and 3.2 applies to the interpretation and application of this IPOA and its relationship with other international instruments. The IPOA is also directed as appropriate towards fishing entities as referred to in the Code of Conduct. The IPOA responds to fisheries specific issues and nothing in it prejudices the positions of States in other fora.

6. In this document:

- a. the reference to States includes regional economic integration organisations in matters within their competence;
- b. the term ‘regional’ includes sub-regional, as appropriate;
- c. the term ‘regional fisheries management organisation’ means an intergovernmental fisheries organisation or arrangement, as appropriate, that has the competence to establish fishery conservation and management measures;
- d. the term ‘conservation and management measures’ means measures to conserve one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law;
- e. the term ‘1982 UN Convention’ refers to the United Nations Convention on the Law of the Sea of 10 December 1982;
- f. the term ‘1993 FAO Compliance Agreement’ refers to the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved by the FAO Conference on 24 November 1993.
- g. the term ‘1995 UN Fish Stocks Agreement’ refers to the Agreement for the Implementation 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; and
- h. the term ‘Code of Conduct’ refers to the FAO Code of Conduct for Responsible Fisheries.

7. This document is a further commitment by all States to implement the Code of Conduct.

III. OBJECTIVE AND PRINCIPLES

8. The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organisations established in accordance with international law.

9. The IPOA to prevent, deter and eliminate IUU fishing incorporates the following principles and strategies. Due consideration should be given to the special requirements of developing countries in accordance with Article 5 of the Code of Conduct.

9.1 Participation and coordination: To be fully effective, the IPOA should be implemented by all States either directly, in cooperation with other States, or indirectly through relevant regional fisheries management organisations or through FAO and other appropriate international organisations. An important element in successful implementation will be close and effective coordination and consultation, and the sharing of information to reduce the incidence of IUU fishing, among States and relevant regional and global organisations. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organisations, should be encouraged.

9.2 Phased implementation: Measures to prevent, deter and eliminate IUU fishing should be based on the earliest possible phased implementation of national plans of action, and regional and global action in accordance with the IPOA.

9.3 Comprehensive and integrated approach: Measures to prevent, deter and eliminate IUU fishing should address factors affecting all capture fisheries. In taking such an approach, States should embrace measures building on the primary responsibility of the flag State and using all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner. The action plan should address all economic, social and environmental impacts of IUU fishing .

9.4 Conservation: Measures to prevent, deter and eliminate IUU fishing should be consistent with the conservation and long-term sustainable use of fish stocks and the protection of the environment.

9.5 Transparency: The IPOA should be implemented in a transparent manner in accordance with Article 6.13 of the Code of Conduct.

9.6 Non-discrimination: The IPOA should be developed and applied without discrimination in form or in fact against any State or its fishing vessels.

IV. IMPLEMENTATION OF MEASURES TO PREVENT, DETER AND ELIMINATE IUU FISHING

ALL STATE RESPONSIBILITIES

International Instruments

10. States should give full effect to relevant norms of international law, in particular as reflected in the 1982 UN Convention, in order to prevent, deter and eliminate IUU fishing.

11. States are encouraged, as a matter of priority, to ratify, accept or accede to, as appropriate, the 1982 UN Convention, the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement. Those States that have not ratified, accepted or acceded to these relevant international instruments should not act in a manner inconsistent with these instruments.

12. States should implement fully and effectively all relevant international fisheries instruments which they have ratified, accepted or acceded to.
13. Nothing in the IPOA affects, or should be interpreted as affecting, the rights and obligations of States under international law. Nothing in the IPOA affects, or should be interpreted as affecting, the rights and obligations contained in the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement, for States parties to those instruments.
14. States should fully and effectively implement the Code of Conduct and its associated International Plans of Action.
15. States whose nationals fish on the high seas in fisheries not regulated by a relevant regional fisheries management organisation should fully implement their obligations under Part VII of the 1982 UN Convention to take measures with respect to their nationals as may be necessary for the conservation of the living resources of the high seas.

National Legislation

Legislation

16. National legislation should address in an effective manner all aspects of IUU fishing.
17. National legislation should address evidentiary standards and admissibility including, as appropriate, the use of electronic evidence and new technologies.

State Control over Nationals

18. In the light of relevant provisions of the 1982 UN Convention, and without prejudice to the primary responsibility of the flag State on the high seas, each State should, to the greatest extent possible, take measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. All States should cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.
19. States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities.

Vessels without Nationality

20. States should take measures consistent with international law in relation to vessels without nationality on the high seas involved in IUU fishing.

Sanctions

21. States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.

Non Cooperating States

22. All possible steps should be taken, consistent with international law, to prevent, deter and eliminate the activities of non-cooperating States to a relevant regional fisheries management organisation which engage in IUU fishing.

Economic Incentives

23. States should, to the extent possible in their national law, avoid conferring economic support, including subsidies, to companies, vessels or persons that are involved in IUU fishing.

Monitoring, Control and Surveillance

24. States should undertake comprehensive and effective monitoring, control and surveillance (MCS) of fishing from its commencement, through the point of landing, to final destination, including by:

- 24.1 developing and implementing schemes for access to waters and resources, including authorisation schemes for vessels;
- 24.2 maintaining records of all vessels and their current owners and operators authorised to undertake fishing subject to their jurisdiction;
- 24.3 implementing, where appropriate, a vessel monitoring system (VMS), in accordance with the relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry VMS on board;
- 24.4 implementing, where appropriate, observer programmes in accordance with relevant national, regional or international standards, including the requirement for vessels under their jurisdiction to carry observers on board;
- 24.5 providing training and education to all persons involved in MCS operations;
- 24.6 planning, funding and undertaking MCS operations in a manner that will maximise their ability to prevent, deter and eliminate IUU fishing;
- 24.7 promoting industry knowledge and understanding of the need for, and their cooperative participation in, MCS activities to prevent, deter and eliminate IUU fishing;
- 24.8 promoting knowledge and understanding of MCS issues within national judicial systems;
- 24.9 establishing and maintaining systems for the acquisition, storage and dissemination of MCS data, taking into account applicable confidentiality requirements;
- 24.10 ensuring effective implementation of national and, where appropriate, internationally agreed boarding and inspection regimes consistent with international law, recognising the rights and obligations of masters and of inspection officers, and noting that such regimes are provided for in certain international agreements, such as the 1995 UN Fish Stocks Agreement, and only apply to the parties to those agreements.

National Plans of Action

25. States should develop and implement, as soon as possible but not later than three years after the adoption of the IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets. These plans should also include, as appropriate, actions to implement initiatives adopted by relevant regional fisheries management organisations to prevent, deter and eliminate IUU fishing. In doing so, States should encourage the full participation and engagement of all interested stakeholders, including industry, fishing communities and non-governmental organisations.

26. At least every four years after the adoption of their national plans of action, States should review the implementation of these plans for the purpose of identifying cost-effective strategies to increase their effectiveness and to take into account their reporting obligations to FAO under Part VI of the IPOA.

27. States should ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated.

Cooperation between States

28. States should coordinate their activities and cooperate directly, and as appropriate through relevant regional fisheries management organisations, in preventing, deterring and eliminating IUU fishing. In particular, States should:

28.1 exchange data or information, preferably in standardised format, from records of vessels authorised by them to fish, in a manner consistent with any applicable confidentiality requirements;

28.2 cooperate in effective acquisition, management and verification of all relevant data and information from fishing;

28.3 allow and enable their respective MCS practitioners or enforcement personnel to cooperate in the investigation of IUU fishing, and to this end States should collect and maintain data and information relating to such fishing;

28.4 cooperate in transferring expertise and technology;

28.5 cooperate to make policies and measures compatible;

28.6 develop cooperative mechanisms that allow rapid responses to IUU fishing; and

28.7 cooperate in monitoring, control and surveillance, including through international agreements.

29. In the light of Article VI of the 1993 FAO Compliance Agreement, flag States should make available to FAO and, as appropriate, to other States and relevant regional or international organisations, information about vessels deleted from their records or whose authorisation to fish has been cancelled and to the extent possible, the reasons therefore.

30. In order to facilitate cooperation and exchange of information, each State and regional or international organisation should nominate and publicise initial formal contact points.

31. Flag States should consider entering into agreements or arrangements with other States and otherwise cooperate for the enforcement of applicable laws and conservation and management measures or provisions adopted at a national, regional or global level.

Publicity

32. States should publicise widely, including through cooperation with other States, full details of IUU fishing and actions taken to eliminate it, in a manner consistent with any applicable confidentiality requirements.

Technical Capacity and Resources

33. States should endeavour to make available the technical capacity and resources which are needed to implement the IPOA. This should include, where appropriate, the establishment of special funds at the national, regional or global level. In this respect, international cooperation should play an important role.

FLAG STATE RESPONSIBILITIES

Fishing Vessel Registration

34. States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing.

35. A flag State should ensure, before it registers a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing.

36. Flag States should avoid flagging vessels with a history of non-compliance except where:

36.1 the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel; or

36.2 having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing.

37. All States involved in a chartering arrangement, including flag States and other States that accept such an arrangement, should, within the limits of their respective jurisdictions, take measures to ensure that chartered vessels do not engage in IUU fishing.

38. Flag States should deter vessels from reflagging for the purposes of non-compliance with conservation and management measures or provisions adopted at a national, regional or global level. To the extent practicable, the actions and standards flag States adopt should be uniform to avoid creating incentives for vessel owners to reflag their vessels to other States.

39. States should take all practicable steps, including denial to a vessel of an authorisation to fish and the entitlement to fly that State's flag, to prevent 'flag hopping'; that is to say, the practice of repeated and rapid changes of a vessel's flag for the purposes of circumventing conservation and management measures or provisions adopted at a national, regional or global level or of facilitating non-compliance with such measures or provisions.

40. Although the functions of registration of a vessel and issuing of an authorisation to fish are separate, flag States should consider conducting these functions in a manner which ensures each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information sharing between the agencies responsible for those functions.

41. A Flag State should consider making its decision to register a fishing vessel conditional upon its being prepared to provide to the vessel an authorisation to fish in waters under its jurisdiction, or on the high seas, or conditional upon an authorisation to fish being issued by a coastal State to the vessel when it is under the control of that flag State.

Record of Fishing Vessels

42. Each flag State should maintain a record of fishing vessels entitled to fly its flag. Each flag State's record of fishing vessels should include, for vessels authorised to fish on the high seas, all the information set out in paragraphs 1 and 2 of Article VI of the 1993 FAO Compliance Agreement, and may also include:

42.1 the previous names, if any and if known;

42.2 name, address and nationality of the natural or legal person in whose name the vessel is registered ;

42.3 name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;

42.4 name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;

42.5 name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and

42.6 vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.

43. Flag States may also require the inclusion of the information in paragraph 42 in their record of fishing vessels that are not authorised to fish on the high seas.

Authorisation to Fish

44. States should adopt measures to ensure that no vessel be allowed to fish unless so authorised, in a manner consistent with international law for the high seas , in particular the rights and duties set out in articles 116 and 117 of the 1982 UN Convention, or in conformity with national legislation within areas of national jurisdiction.

45. A flag State should ensure that each of the vessels entitled to fly its flag fishing in waters outside its sovereignty or jurisdiction holds a valid authorisation to fish issued by

that flag State. Where a coastal State issues an authorisation to fish to a vessel, that coastal State should ensure that no fishing in its waters occurs without an authorisation to fish issued by the flag State of the vessel.

46. Vessels should have an authorisation to fish and where required carry it on board. Each State's authorisation should include, but need not be limited to:

46.1 the name of the vessel, and, where appropriate, the natural or legal person authorised to fish;

46.2 the areas, scope and duration of the authorisation to fish; and

46.3 the species, fishing gear authorised, and where appropriate, other applicable management measures.

47. Conditions under which an authorisation is issued may also include, where required:

47.1 vessel monitoring systems;

47.2 catch reporting conditions, such as:

47.2.1 time series of catch and effort statistics by vessel;

47.2.2 total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery period (nominal weight is defined as the live weight equivalent of the catch);

47.2.3 discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

47.2.4 effort statistics appropriate to each fishing method; and

47.2.5 fishing location, date and time fished and other statistics on fishing operations.

47.3 reporting and other conditions for transshipping, where transshipping is permitted;

47.4 observer coverage;

47.5 maintenance of fishing and related log books;

47.6 navigational equipment to ensure compliance with boundaries and in relation to restricted areas;

47.7 compliance with applicable international conventions and national laws and regulations in relation to maritime safety, protection of the marine environment, and conservation and management measures or provisions adopted at a national, regional or global level;

47.8 marking of its fishing vessels in accordance with internationally recognised standards, such as the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels. Vessels' fishing gear should similarly be marked in accordance with internationally recognised standards;

47.9 where appropriate, compliance with other aspects of fisheries arrangements applicable to the flag State; and

47.10 the vessel having a unique, internationally recognised identification number, wherever possible, that enables it to be identified regardless of changes in registration or name over time.

48. Flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. To this end, flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or transship fish to or from these vessels. This paragraph is without prejudice to the taking of appropriate action, as necessary, for humanitarian purposes, including the safety of crew members.

49. Flag States should ensure that, to the greatest extent possible, all of their fishing, transport and support vessels involved in transshipment at sea have a prior authorisation to transship issued by the flag State, and report to the national fisheries administration or other designated institution:

- 49.1 the date and location of all of their transshipments of fish at sea;
- 49.2 the weight by species and catch area of the catch transshipped;
- 49.3 the name, registration, flag and other information related to the identification of the vessels involved in the transshipment; and
- 49.4 the port of landing of the transshipped catch.

50. Flag States should make information from catch and transshipment reports available, aggregated according to areas and species, in a full, timely and regular manner and, as appropriate, to relevant national, regional and international organisations, including FAO, taking into account applicable confidentiality requirements.

COASTAL STATE MEASURES

51. In the exercise of the sovereign rights of coastal States for exploring and exploiting, conserving and managing the living marine resources under their jurisdiction, in conformity with the 1982 UN Convention and international law, each coastal State should implement measures to prevent, deter and eliminate IUU fishing in the exclusive economic zone. Among the measures which the coastal State should consider, consistent with national legislation and international law, and to the extent practicable and appropriate, are:

- 51.1 effective monitoring, control and surveillance of fishing activities in the exclusive economic zone;
- 51.2 cooperation and exchange of information with other States, where appropriate, including neighbouring coastal States and with regional fisheries management organisations;
- 51.3 to ensure that no vessel undertakes fishing activities within its waters without a valid authorisation to fish issued by that coastal State;
- 51.4 to ensure that an authorisation to fish is issued only if the vessel concerned is entered on a record of vessels;
- 51.5 to ensure that each vessel fishing in its waters maintains a logbook recording its fishing activities where appropriate;
- 51.6 to ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorised by that coastal State, or conducted in conformity with appropriate management regulations;

51.7 regulation of fishing access to its waters in a manner which will help to prevent, deter and eliminate IUU fishing; and

51.8 avoiding licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing, taking into account the provisions of paragraph 36.

PORT STATE MEASURES

52. States should use measures, in accordance with international law, for port State control of fishing vessels in order to prevent, deter and eliminate IUU fishing. Such measures should be implemented in a fair, transparent and non-discriminatory manner.

53. When used in paragraphs 52 to 64, port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of refuelling, re-supplying, transshipping and landing, without prejudice to the sovereignty of a coastal State in accordance with its national law and article 25.2 of the 1982 UN Convention and other relevant international law.

54. Notwithstanding paragraphs 52, 53 and 55; a vessel should be provided port access, in accordance with international law, for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

55. Prior to allowing a vessel port access, States should require fishing vessels and vessels involved in fishing related activities seeking permission to enter their ports to provide reasonable advance notice of their entry into port, a copy of their authorisation to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing.

56. Where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.

57. States should publicise ports to which foreign flagged vessels may be permitted admission and should ensure that these ports have the capacity to conduct inspections.

58. In the exercise of their right to inspect fishing vessels, port States should collect the following information and remit it to the flag State and, where appropriate, the relevant regional fisheries management organisation:

58.1 the flag State of the vessel and identification details;

58.2 name, nationality, and qualifications of the master and the fishing master;

58.3 fishing gear;

58.4 catch on board, including origin, species, form, and quantity;

58.5 where appropriate, other information required by relevant regional fisheries management organisations or other international agreements; and

58.6 total landed and transshipped catch.

59. If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organisation. The port State may take other action with the consent of, or upon the request of, the flag State.

60. In applying paragraphs 58 and 59, States should safeguard the confidentiality of information collected, in accordance with their national laws.

61. States should establish and publicise a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for port State control officers. States should also consider capacity-building needs in the development and implementation of this strategy.

62. States should cooperate, as appropriate, bilaterally, multilaterally and within relevant regional fisheries management organisations, to develop compatible measures for port State control of fishing vessels. Such measures should deal with the information to be collected by port States, procedures for information collection, and measures for dealing with suspected infringements by the vessel of measures adopted under these national, regional or international systems.

63. States should consider developing within relevant regional fisheries management organisations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organisation and which have not agreed to cooperate with that regional fisheries management organisation, which are identified as being engaged in fishing activities in the area of that particular organisation, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures. The identification of the vessels by the regional fisheries management organisation should be made through agreed procedures in a fair, transparent and non-discriminatory manner.

64. States should enhance cooperation, including by the flow of relevant information, among and between relevant regional fisheries management organisations and States on port State controls.

INTERNATIONALLY AGREED MARKET-RELATED MEASURES

65. The measures in paragraphs 66 to 76 are to be implemented in a manner which recognises the right of States to trade in fish and fishery products harvested in a sustainable manner and should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organisation, and implemented in a fair, transparent and non-discriminatory manner.

66. States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organisation to have been engaged in IUU fishing being traded or imported into their territories. The identification of the vessels by the regional fisheries management organisation should be made through agreed procedures in a fair, transparent and non-discriminatory manner. Trade-related measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in WTO Agreements, and implemented in a fair, transparent and non-discriminatory manner. Trade-related measures should only be used in exceptional circumstances, where other measures have proven unsuccessful to prevent, deter and eliminate IUU fishing, and only after prior consultation with interested States. Unilateral trade-related measures should be avoided.

67. States should ensure that measures on international trade in fish and fishery products are transparent, based on scientific evidence, where applicable, and are in accordance with internationally agreed rules.

68. States should cooperate, including through relevant global and regional fisheries management organisations, to adopt appropriate multilaterally agreed trade-related measures, consistent with the WTO, that may be necessary to prevent, deter and eliminate IUU fishing for specific fish stocks or species. Multilateral trade-related measures envisaged in regional fisheries management organisations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.

69. Trade-related measures to reduce or eliminate trade in fish and fish products derived from IUU fishing could include the adoption of multilateral catch documentation and certification requirements, as well as other appropriate multilaterally-agreed measures such as import and export controls or prohibitions. Such measures should be adopted in a fair, transparent and non-discriminatory manner. When such measures are adopted, States should support their consistent and effective implementation.

70. Stock or species-specific trade-related measures may be necessary to reduce or eliminate the economic incentive for vessels to engage in IUU fishing.

71. States should take steps to improve the transparency of their markets to allow the traceability of fish or fish products.

72. States, when requested by an interested State, should assist any State in deterring trade in fish and fish products illegally harvested in its jurisdiction. Assistance should be given in accordance with terms agreed by both States and fully respecting the jurisdiction of the State requesting assistance.

73. States should take measures to ensure that their importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public are aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing, whether by the State under whose jurisdiction the vessel is

operating or by the relevant regional fisheries management organisations in accordance with its agreed procedures, and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. All identifications of vessels engaged in IUU fishing should be made in a fair, transparent and non-discriminatory manner.

74. States should take measures to ensure that their fishers are aware of the detrimental effects of doing business with importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers and other services suppliers identified as doing business with vessels identified as engaged in IUU fishing, whether by the State under whose jurisdiction the vessel is operating or by the relevant regional fisheries management organisation in accordance with its agreed procedures, and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing. All identifications of vessels engaged in IUU fishing should be made in a fair, transparent and non-discriminatory manner.

75. States should work towards using the Harmonised Commodity Description and Coding System for fish and fisheries products in order to help promote the implementation of the IPOA.

76. Certification and documentation requirements should be standardised to the extent feasible, and electronic schemes developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid unnecessary burdens on trade.

RESEARCH

77. States should encourage scientific research on methods of identifying fish species from samples of processed products. FAO should facilitate the establishment of a network of databases of genetic and other markers used to identify fish species from processed product, including the ability to identify the stock of origin where possible.

REGIONAL FISHERIES MANAGEMENT ORGANISATIONS

78. States should ensure compliance with and enforcement of policies and measures having a bearing on IUU fishing which are adopted by any relevant regional fisheries management organisation and by which they are bound. States should cooperate in the establishment of such organisations in regions where none currently exist.

79. As the cooperation of all relevant States is important for the success of measures taken by relevant regional fisheries management organisations to prevent, deter and eliminate IUU fishing, States which are not members of a relevant regional fisheries management organisation are not discharged from their obligation to cooperate, in accordance with their international obligations, with that regional fisheries management organisation. To that end, States should give effect to their duty to cooperate by agreeing to apply the conservation and management measures established by that regional fisheries management organisation, or by adopting measures consistent with

those conservation and management measures, and should ensure that vessels entitled to fly their flag do not undermine such measures.

80. States, acting through relevant regional fisheries management organisations, should take action to strengthen and develop innovative ways, in conformity with international law, to prevent, deter, and eliminate IUU fishing. Consideration should be given to including the following measures:

80.1 institutional strengthening, as appropriate, of relevant regional fisheries management organisations with a view to enhancing their capacity to prevent, deter and eliminate IUU fishing;

80.2 development of compliance measures in conformity with international law;

80.3 development and implementation of comprehensive arrangements for mandatory reporting;

80.4 establishment of and cooperation in the exchange of information on vessels engaged in or supporting IUU fishing;

80.5 development and maintenance of records of vessels fishing in the area of competence of a relevant regional fisheries management organisation, including both those authorised to fish and those engaged in or supporting IUU fishing;

80.6 development of methods of compiling and using trade information to monitor IUU fishing;

80.7 development of MCS, including promoting for implementation by its members in their respective jurisdictions, unless otherwise provided for in an international agreement, real time catch and vessel monitoring systems, other new technologies, monitoring of landings, port control, and inspections and regulation of transshipment, as appropriate;

80.8 development within a regional fisheries management organisation, where appropriate, of boarding and inspection regimes consistent with international law, recognising the rights and obligations of masters and inspection officers;

80.9 development of observer programmes;

80.10 where appropriate, market-related measures in accordance with the IPOA;

80.11 definition of circumstances in which vessels will be presumed to have engaged in or to have supported IUU fishing;

80.12 development of education and public awareness programmes;

80.13 development of action plans; and

80.14 where agreed by their members, examination of chartering arrangements, if there is concern that these may result in IUU fishing.

81. States, acting through relevant regional fisheries management organisations, should compile and make available on a timely basis, and at least on an annual basis, to other regional fisheries management organisations and to FAO, information relevant to the prevention, deterrence and elimination of IUU fishing, including:

81.1 estimates of the extent, magnitude and character of IUU activities in the area of competence of the regional fisheries management organisation;

81.2 details of measures taken to deter, prevent and eliminate IUU fishing;

81.3 records of vessels authorised to fish, as appropriate; and

81.4 records of vessels engaged in IUU fishing.

82. Objectives of institutional and policy strengthening in relevant regional fisheries management organisations in relation to IUU fishing should include enabling regional fisheries management organisations to:

82.1 determine policy objectives regarding IUU fishing, both for internal purposes and co-ordination with other regional fisheries management organisations;

82.2 strengthen institutional mechanisms as appropriate, including mandate, functions, finance, decision making, reporting or information requirements and enforcement schemes, for the optimum implementation of policies in relation to IUU fishing;

82.3 regularise coordination with institutional mechanisms of other regional fisheries management organisations as far as possible in relation to IUU fishing, in particular information, enforcement and trade aspects; and

82.4 ensure timely and effective implementation of policies and measures internally, and in cooperation with other regional fisheries management organisations and relevant regional and international organisations.

83. States, acting through relevant regional fisheries management organisations, should encourage non-contracting parties with a real interest in the fishery concerned to join those organisations and to participate fully in their work. Where this is not possible, the regional fisheries management organisations should encourage and facilitate the participation and cooperation of non-contracting parties, in accordance with applicable international agreements and international law, in the conservation and management of the relevant fisheries resources and in the implementation of measures adopted by the relevant organisations. Regional fisheries management organisations should address the issue of access to the resource in order to foster cooperation and enhance sustainability in the fishery, in accordance with international law. States, acting through relevant regional fisheries management organisations, should also assist, as necessary, non-contracting parties in the implementation of paragraphs 78 and 79 of the IPOA.

84. When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant regional fisheries management organisation, the member States, acting through the organisation, should draw the problem to the attention of that State. If the problem is not rectified, members of the organisation may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.

V. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

85. States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, should cooperate to support training and capacity building and consider providing financial, technical and other assistance to developing countries, including in particular the least developed among them and small island developing States, so that they can more fully meet their commitments under the IPOA

and obligations under international law, including their duties as flag States and port States. Such assistance should be directed in particular to help such States in the development and implementation of national plans of action in accordance with paragraph 25.

86. States, with the support of FAO and relevant international financial institutions and mechanisms, where appropriate, should cooperate to enable:

- 86.1 review and revision of national legislation and regional regulatory frameworks;
- 86.2 the improvement and harmonisation of fisheries and related data collection;
- 86.3 the strengthening of regional institutions; and
- 86.4 the strengthening and enhancement of integrated MCS systems, including satellite monitoring systems.

VI. REPORTING

87. States and regional fisheries management organisations should report to FAO on progress with the elaboration and implementation of their plans to prevent, deter and eliminate IUU fishing as part of their biennial reporting to FAO on the Code of Conduct. These reports should be published by FAO in a timely manner.

VII. ROLE OF FAO

88. FAO will, as and to the extent directed by its Conference, collect all relevant information and data that might serve as a basis for further analysis aimed at identifying factors and causes contributing to IUU fishing such as a lack of input and output management controls, unsustainable fishery management methods and subsidies that contribute to IUU fishing.

89. FAO will, as and to the extent directed by its Conference, support development and implementation of national and regional plans to prevent, deter and eliminate IUU fishing through specific, in-country technical assistance projects with Regular Programme funds and through the use of extra-budgetary funds made available to the Organisation for this purpose.

90. FAO should, in collaboration with other relevant international organisations, in particular IMO, further investigate the issue of IUU fishing.

91. FAO should convene an Expert Consultation on the implementation of paragraph 76 of the IPOA.

92. FAO should investigate the benefits of establishing and maintaining regional and global databases, including but not limited to, information as provided for in Article VI of the 1993 FAO Compliance Agreement.

93. The FAO Committee on Fisheries will, based on a detailed analysis by the Secretariat, biennially evaluate the progress towards the implementation of the IPOA.

Annex 1.2 – Australia’s Statement on IUU fishing to the FAO Committee on Fisheries in 2003

Chair, fellow members of COFI and observers – this Australian statement addresses our thoughts on the difficulties associated with combating IUU fishing, drawing examples from our problems with toothfish, and the need to strengthen RFMOs.

Let me say at the beginning that Australia genuinely welcomes the focus that FAO and the international community have provided to try to combat IUU fishing in the last three years. However, Australia’s experience is that the nature of IUU fishing is changing and we are still losing the battle.

IUU activity affects all of us and is equally prevalent in the EEZs of developing countries as well as developed countries. Equally, IUU fishing has found a very lucrative home on the high seas.

The very nature of IUU fishing activity has changed from just rogue states to also become the domain of internationally organised criminals who are masquerading as international and national fishing companies. The trade more and more involves rogue nationals of responsible fishing states who become engaged for the profit it provides. There is no mistake – this is organised criminal activity targeted against countries, against the environment and against the very principles of sustainability of the world’s resources that we have all sworn to protect.

Chair, Australia has had enough. We take a particularly poor view of those countries, as well as their citizens and registered companies, who seek to steal and pillage the world’s high seas stocks, our natural resources and those of other countries for their own private gain.

Australia believes that there are three priority issues in world fisheries today: overcapacity, combating IUU fishing, and making members accept their full responsibilities as members of RFMOs, so that they can and will take strong and decisive actions to sustainably manage world fisheries. These issues are closely linked.

Australia started the battle against IUU fishing in this very venue four years ago and sought to bring the problem to the world’s attention, believing that all countries would address the issue in a responsible and co-ordinated fashion. Sadly, this has not yet happened.

Chair, Australia comes here to COFI every two years and we participate actively and constructively in a range of RFMOs, as well as in bilateral and multilateral meetings each year that are – according to their objectives and goals – instituted to bring into being responsible and sustainable fisheries management regimes for the world’s fish stocks.

It is interesting to see the same small number of countries who attend these meetings and are members of RFMOs – and who provide a haven for IUU fishing activity – talk the talk of responsible fishing nations at these meetings, but then ‘walk the walk’ hand in hand with the pirates and pillagers of the world fish stocks the moment they leave these hallowed halls. Some of these very countries are here today. They need no introduction.

Chair, by way of example – and I fully accept that there are other equally important examples that other countries have – I will briefly describe our experience over the last three years with the IUU toothfish trade.

When you look at the last six arrests by Australia (and seven by France) of toothfish poachers, two things quickly become evident. First, the flag States of these vessels (Panama, Belize, Togo, Seychelles, Russia, Netherlands Antilles, Saint Vincent and the Grenadines and Sao Tome and Principe) are all being used as Flag of Convenience registers. Second, the nationalities of the captains and senior crew are these days almost always Spanish or Russian, although in the last two French captures the captains were Chilean and Uruguayan. The tables below gives the details.

Australian Arrests

Year	Vessel	Flag	Captain and Senior Crew
1997	Alicia Glacial	Panama	Faeroe Islands
1997	Salvora	Belize	Spanish
1998	Big Star	Seychelles	Spanish
2001	South Tomi	Togo	Russian and Spanish
2002	Lena	Russia	Spanish and Russian
2002	Volga	Russia	Spanish and Russian

French Arrests

Year	Vessel	Flag	Captain
2000	Grand Prince	Belize	Spanish
2000	Vedra	Sao Tome & Principe	Spanish
2000	Monte Confurco	Seychelles	Spanish
2000	Camouco	Panama	Spanish
2001	Castor / Salvora	Saint Vincent & the Grenadines	Spanish
2002	Eternal/Arvisa Camouco	Netherland Antilles	Uruguayan
2003	Lince (Cisne Rojo)	Seychelles	Chilean

There is a consistent group of countries, flag of convenience States and nationals involved in this trade. Australia fully accepts that there is no problem with legitimately flagged Spanish and Chilean vessels in the toothfish fishery and congratulates Spain for starting a process internally to address IUU fishing. However what these data highlight is the difficulty in dealing with IUU fishing where you have rogue nationals working for foreign international companies involved in international organised crime. We are not just dealing with countries as we have done in the past. We are dealing more and more with international criminal activity.

Australia knows with some certainty from sources, including the legally operating industry, that a group of vessels commonly know as the ‘alphabet boats’ – Austin, Boston, Champion, Darwin, Eva, Florence, Georgia, Hunter, Isobel, Jackson, Lena – as

well as the vessels Neva, Ural and the Volga, are either all actively involved in or linked to the illegal toothfish trade. These were their names yesterday – they may have changed by today. These vessels are flagged in a combination of countries, including Russia and Bolivia. They are operating under flags of convenience. Their flag States cannot, or will not, enforce their obligations as the flag States of these pirates.

We know that the product of these IUU fishing operations is both trans-shipped on the high seas and landed and shipped through Mauritius, Tanjung Priok (in Indonesia) and Singapore. We also know with certainty that a number of countries, including Russia and Uruguay, are prepared to compromise the CCAMLR Catch Documentation Scheme and provide what Australia can only call ‘irregular’ documentation, to cover the landings and trans-shipments of this illegally caught product.

The CCAMLR Scientific Committee has confirmed the view that the catches reported to CCAMLR as coming from FAO Statistical Areas 51 and 57 are nonsensical. To continue to be misled about these catches is an insult to our intelligence. We know the bulk of the raw product enters China for processing through ports in China, including Hong Kong. I am not suggesting for one moment that China itself is doing anything improper or illegal, but rather highlighting that we need to work with importing countries to assist them to identify and confiscate illegally caught and falsely documented imported product. We know the biggest markets for this product are in the United States, Japan and the European Union. Of these, only the US is so far taking concerted action to stop the entry into its markets of this illegally caught and documented product. The other main market States should do the same.

What I have presented here, Chair, are just the facts and the information from the arrests of vessels and the knowledge that we have picked up of the activities involved in this IUU fishing trade.

So what must we do about it?

Chair, as I said at the start of this statement, our concern is not just about toothfish, a species whose prominence in relation to IUU fishing makes it the catalyst for change. What we decide to do through COFI should be designed to assist all countries equally.

For its part, Australia will continue to take strong domestic measures to combat IUU fishing. We will also maintain a high degree of international diplomatic action – with an ongoing program of monitoring, surveillance and cooperation with all like-minded countries and in particular with France, Indonesia and South Africa, to bring to justice the IUU fishing operators that we can catch and prosecute.

Internationally, we will continue to use venues such as COFI to name the guilty countries and operators, to make sure the world is reminded of those who profit from the illegal trade in toothfish.

Australia remains frustrated by the narrow application of international law and the inability of the soft law instruments of FAO to provide an internationally enforceable legal framework to deter this trade and the highly organised international criminal activity that is behind it. We currently have no legal framework to get at the real beneficiaries of IUU fishing activity.

Australia has six suggestions for COFI to consider at this meeting. They may well be usefully combined with the suggestions that other States have made:

1. We call on FAO to immediately form a Working Party to review the current legal and soft law regimes that deal with IUU fishing in all its forms, with the objective of developing a legal framework that will close all gaps and loopholes in the current regimes and provide effective measures for the elimination of IUU fishing and the trade in IUU product. The outcomes will be (a) binding international law, (b) making states enforce their flag State responsibilities, (c) eliminating forever Flag of Convenience registers, and (d) targeting the real beneficial owners of fishing vessels that engage in IUU fishing;
2. To ensure that the actions recommended by the Working Party receive the necessary high level attention, we call for the Working Party to finish its work in time to allow for IUU fishing to be placed on the agenda of the FAO Ministerial Conference to be held in November this year, so that Ministers can endorse an effective program of action;
3. We ask FAO to work with the International Maritime Organisation to determine a legal way of eliminating FOC registers for fishing vessels. As an interim step, we suggest that as well as 'black' and 'white' lists of fishing vessels, RFMOs develop 'black' and 'white' lists of shipping registers. COFI, in consultation with States, should determine criteria for assessing actual shipping registers, so that RFMOs can apply those criteria and allow only shipping registers of good standing to be acceptable to RFMOs. In effect, we would have a 'white' list of vessel registers in good standing. This will have the immediate effect of dealing effectively with most of the IUU fleet by putting a stop to the practice of renaming and reflagging fishing vessels involved in IUU fishing;
4. Australia supports the early convening by the FAO of a technical consultation on port State measures to combat IUU fishing;
5. Australia also encourages countries to join in the work of the MCS Network believing that greater engagement and exchange of operational staff is essential in combating this crime; and
6. Australia welcomes the work to date on Catch Documentation Schemes but believes that in any further work the schemes need to be strengthened as they provide a good basis for effective action.

Chair, we do not have very much time in which to take action to protect the health of the world's high seas fisheries. We must act now and act decisively. If we don't have the courage and commitment to take the hard decisions on IUU fishing at this meeting, then I would just ask that before members take any soft and easy decisions, they stop for a moment and think about what they are doing. If we are not prepared to take the hard decisions, then I believe we are starting a process of making COFI and RFMOs irrelevant to international fisheries management. If this occurs, then we will in a short time commit this great international organisation – and the world's fish stocks – to the dust bin of history.

As always, Chair, it is our collective decision that matters.

Glenn Hurry, General Manager, Fisheries and Aquaculture
 Australian Government Department of Agriculture, Fisheries and Forestry
 February 2003

Annex 1.3 – Glossary of Abbreviations and Acronyms

ACC	Australian Crime Commission
ACIAR	Australian Centre for International Agricultural Research
AFLEC	Australasian Fisheries Law Enforcement Conference
AFMA	Australian Fisheries Management Authority
AFMF	Australian Fisheries Management Forum
AFZ	Australian Fishing Zone
AMSA	Australian Maritime Safety Authority
APEC	Asia Pacific Economic Cooperation Organisation
AQIS	Australian Quarantine and Inspection Service
ATS	Australian Treaty Series
AusAid	Australian Agency for International Development
AUS-NPOA-IUU	Australia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
CCAMLR	Convention [or Commission] on the Conservation of Antarctic Living Marine Resources
CCSBT	Convention [or Commission] for the Conservation of Southern Bluefin Tuna
CDS	Catch Documentation Scheme
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COFI	Committee on Fisheries (of FAO)
EEZ	Exclusive Economic Zone
EPBC Act 1999	Environment Protection and Biodiversity Conservation Act 1999 of Australia
FAA 1991	Fisheries Administration Act 1991 of Australia
FAD	Fish Aggregating Device
FAO	Food and Agriculture Organisation of the United Nations
FFA	Forum Fisheries Agency of the Pacific Community
FMA 1991	Fisheries Management Act 1991 of Australia
FOC	Flag of Convenience
GEF	Global Environment Facility
GVP	Gross Value of Production
HIMI	Heard Island and McDonald Islands (of Australia)
ICCAT	International Convention [or Commission] for the Conservation of Atlantic Tunas
ID	Identification, or Identity
IMO	International Maritime Organisation
IOTC	Indian Ocean Tuna Commission

IPOA	International Plan of Action
IPOA-IUU Fishing	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
ITLOS	International Tribunal for the Law of the Sea
IUU Fishing	Illegal, Unreported and Unregulated Fishing
MCS	Fisheries Monitoring, Control and Surveillance
MCS Network	International Monitoring, Control and Surveillance Network for Fisheries-Related Activities (Australia is a founding member)
MoU	Memorandum of Understanding
MTC	Minimum Terms and Conditions (of the FFA) for Foreign Fishing Vessels
NDS	National Docketing Scheme
NPOA	National Plan of Action
OCS	Offshore Constitutional Settlement
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OFP	Oceanic Fisheries Program of the Secretariat of the Pacific Community
PNG	Papua New Guinea
RFMO	Regional Fisheries Management Organisation
SBT	Southern Bluefin Tuna
Seabird SRG	Seabird Stakeholder Reference Group
SRA 1981	Shipping Registration Act 1981 of Australia
TAC	Total Allowable Catch
TAP	Threat Abatement Plan
TED	Turtle Excluder Device
The Code	FAO Code of Conduct for Responsible Fisheries
TIS	Trade Information Scheme
TSFA 1984	Torres Strait Fisheries Act 1984 of Australia
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
US or USA	United States of America
VMS	Vessel Monitoring System
WCPFC	Convention [or Commission] on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
WTO	World Trade Organisation

Annex 1.4 – Objectives of Australia’s Fisheries Management Act 1991

(1) The following objectives must be pursued by the Minister in the administration of this Act and by AFMA in the performance of its functions:

- (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and
- (c) maximising economic efficiency in the exploitation of fisheries resources; and
- (d) ensuring accountability to the fishing industry and to the Australian community in AFMA’s management of fisheries resources; and
- (e) achieving government targets in relation to the recovery of the costs of AFMA.

(2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:

- (a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and
- (b) achieving the optimum utilisation of the living resources of the AFZ; and
- (c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia’s obligations under international agreements that deal with fish stocks; and
- (d) to the extent that Australia has obligations
 - (i) under international law; or
 - (ii) under the Compliance Agreement or any other international agreement; in relation to fishing activities by Australian flagged boats on the high seas that are additional to the obligations referred to in paragraph (c) – ensuring that Australia implements those first-mentioned obligations

but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.

(sub-sections 3(1) and (2) of the FMA 1991)

Annex 1.5 – Internet Addresses for Australian Fisheries and related Agencies

Australian Fisheries Management Authority: www.afma.gov.au/

Australian Government Department of Agriculture, Fisheries and Forestry:
www.daff.gov.au/

Australian Government Department of Environment and Heritage: www.deh.gov.au/

Australian Seafood Industry Council: www.asic.org.au/

CCAMLR: www.ccamlr.org/

CCSBT: www.ccsbt.org/

Department of Fisheries, Western Australia: www.fish.wa.gov.au/

Department of Primary Industries, Victoria: www.dpi.vic.gov.au/

Department of Primary Industries and Fisheries, Queensland:
www.dpi.qld.gov.au/fishweb/

Department of Primary Industries and Resources, South Australia: www.pir.sa.gov.au/

Department of Primary Industries, Water and Environment, Tasmania:
www.dpiwe.tas.gov.au/

Fisheries Northern Territory: www.fisheries.nt.gov.au/

Forum Fisheries Agency: www.ffa.int/

Great Barrier Reef Marine Park Authority: www.gbrmpa.gov.au/

International Monitoring, Control and Surveillance Network for Fisheries-Related Activities (MCS Network): imcsnet.org/

IOTC: www.iotc.org/

New South Wales Fisheries: www.fisheries.nsw.gov.au/

Oceanic Fisheries Program: www.spc.org.nc/OceanFish/

WCPFC (Preparatory Conference): www.ocean-affairs.com/

ANNEX 2 – CONVENTIONS, AGREEMENTS, MEMORANDA OF UNDERSTANDING, ETC, RELEVANT TO COMBATING IUU FISHING AND PROTECTING MARINE SPECIES, TO WHICH AUSTRALIA IS PARTY OR SIGNATORY

1. Fisheries-Related Instruments ⁴²

United Nations Convention on the Law of the Sea of 10 December 1982 ('the 1982 UN Convention' or 'UNCLOS'). Entry into force for Australia and generally: 16 November 1994 (ATS 31).

Agreement for the Implementation 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 ('the 1995 UN Fish Stocks Agreement'). Entry into force for Australia and generally: 11 December 2001 (ATS 8).

Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands. Signed by Australia on 24 November 2003. The Treaty will enter into force when the Parties notify each other that their internal procedures for its entry into force have been met.

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Ratified by Australia on 22 September 2003. The 13th ratification for the WCPFC was received by the depository on 19 December 2003 and the Convention entered into force on 19 June 2004 (ILM 277 (2001)).

Convention for the Conservation of Southern Bluefin Tuna. Entry into force for Australia and generally: 20 May 1994 (ATS 16).

Convention on the Conservation of Antarctic Marine Living Resources. Entry into force for Australia and generally: 7 April 1982 (ATS 9).⁴³

Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. Entry into force for Australia and generally: 15 June 1988 (ATS 42).

South Pacific Forum Fisheries Agency Convention. Entry into force generally on 9 August 1979 and for Australia on 12 October 1979 (ATS 16).

Agreement for the Establishment of the Indian Ocean Tuna Commission. Entry into force generally on 27 March 1996 and for Australia on 13 November 1996 (ATS 20).

⁴² In addition to the treaties listed, Australia is party to bilateral fisheries cooperation treaties with Japan, Russia, China, the USA and Korea. In general, these treaties define the conditions under which fishing in the AFZ by vessels of these countries would be conducted. Since there are currently no significant fishing operations taking place in the AFZ by foreign fishing vessels, the treaties have not been included in the list. The texts of these treaties may be accessed on the internet at www.austlii.edu.au/au/other/dfat/subjects/Fishing.html.

⁴³ CCAMLR is primarily a conservation organisation, established to conserve *all* Antarctic marine living resources within the Antarctic Treaty System. However, in the context of fisheries conservation and management in general and IUU fishing in particular, it operates in important respects as an RFMO.

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ('the FAO Compliance Agreement'). Entry into force generally on 24 April 2003 and for Australia on 19 August 2004 (TBC).

Treaty Between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area Between the Two Countries, Including the Area Known as Torres Strait, and Related Matters ('the Torres Strait Treaty'). Entry into force: 15 February 1985 (ATS 4).

Agreement Between the Government of Australia and the Government of the Republic of Indonesia Relating to Cooperation in Fisheries. Entry into force: 29 May 1993 (ATS 18).

Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region. Entry into force generally on 20 May 1993 and for Australia on 3 September 1993 (ATS 31).

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific. Entry into force generally on 17 May 1991 and for Australia on 6 July 1992 (ATS 30).

Arrangement Between the Government of Australia and the Government of New Zealand for the Conservation and Management of Orange Roughy on the South Tasman Rise, 1998. See website http://www.dfat.gov.au/geo/new_zealand/roughy.pdf. (Australia regards this instrument as having the status of an MoU).

Memorandum of Understanding Between the Government of Australia and the Government of the Republic of Indonesia Regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Exclusive Fishing Zone and Continental Shelf, signed on 7 November 1974, and *Agreed Minutes of Meeting Between Officials of Indonesia and Australia on Fisheries*, signed on 29 April 1989.

Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries 1992 (Fisheries Cooperation Agreement)

2. Instruments Related to Protecting Marine Species

Convention on the Conservation of Migratory Species of Wild Animals. Entry into force generally on 1 November 1983 and for Australia on 1 September 1991 (ATS 32). There are also two subsidiary instruments relating to marine species:

- *Agreement on the Conservation of Albatrosses and Petrels*, ratified by Australia and entered into effect on 1 February 2004. The Agreement provides that parties shall endeavour, within the context of the Agreement, to adopt additional measures to combat IUU fishing activities that may have an adverse effect on albatrosses and petrels.
- *Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South East Asia* (signed by Australia on 1 September 2001).

Convention on the Conservation of Antarctic Marine Living Resources. Entry into force for Australia and generally: 7 April 1982 (ATS 9).

Convention on Biological Diversity. Entry into force generally and for Australia: 29 December 1993 (ATS 32).

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region ('SPREP'). Entry into force for Australia and generally: 22 August 1990 (ATS 31).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Entry into force generally on 1 July 1975 and for Australia on 27 October 1976 (ATS 29).

Convention for the Conservation of Antarctic Seals. Entry into force generally on 11 March 1978 and for Australia on 31 July 1987 (ATS 11).

Protocol on Environmental Protection to the Antarctic Treaty of 1 December 1959. Entry into force for Australia and generally: 14 January 1998 (ATS 6).

3. Other Instruments⁴⁴

International Convention for the Safety of Life at Sea, 1974 ('SOLAS'). Entry into force generally on 25 May 1980 and for Australia on 17 November 1983 (ATS 22). Also the *1988 Protocol to SOLAS* and amendments to SOLAS adopted since then. Chapter V of SOLAS, on the safety of navigation, does apply to fishing vessels.

Convention on the International Regulations for Preventing Collisions at Sea, 1972 ('COLLREGS') Entry into force generally on 15 July 1977 and for Australia on 29 February 1980 (ATS 5). Also the *International Regulations for Preventing Collisions at Sea, 1960*, which entered into force generally on 1 September 1965 and for Australia on 13 January 1967 (ATS 7), and subsequent amendments to the Convention and the Regulations. These instruments apply to fishing vessels.

Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended ('MARPOL 73/78'). The Protocol text incorporates the text of the *International Convention for the Prevention of Pollution from Ships, 1973*. Entry into force generally on 2 October 1983 and for Australia on 14 January 1988 (ATS 29). MARPOL 73/78 applies to all vessels other than naval and other non-commercial government vessels, which are however required to comply with MARPOL 73/78 as far as is practicable.

Memorandum of Understanding on Port State Control in the Asia-Pacific Region ('Tokyo MoU'), as amended on 27 March 2003, with effect from 1 July 2003. The Australian Maritime Safety Authority is the agency responsible for adhering to this MoU in Australia.

⁴⁴ There are two international maritime conventions relating to fishing vessels which are currently very significantly short of the required number of ratifications: the *Torremolinos Protocol of 1993 Relating to the International Convention for the Safety of Fishing Vessels, 1997* and the *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995* ('the STCW-F Convention'). Australia has supported efforts by the IMO and other international organisations in calling for the entry into force of these two instruments. Ratification by Australia will be more fully considered when a sufficient number of States with globally significant fishing vessel tonnages indicate their preparedness to do so, so that actual entry into force becomes a definite possibility.

ANNEX 3 – AUSTRALIA'S NATIONAL PLANS OF ACTION FOR SEABIRDS AND SHARKS

Australia's National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (AUS-NPOA-Seabirds)⁴⁵

Australia has now completed an assessment of seabird interactions with longline fisheries in the Australian Fishing Zone. This involved reviewing and assessing each Australian longline fishery and its interactions with seabirds, including summarising mitigation measures trialled to date. The assessment is an essential element in finalising the AUS-NPOA-Seabirds.

Australia had previously considered the issue of seabird by-catch in its nationally-managed longline fisheries and a *Threat Abatement Plan for the Incidental Catch (or By-Catch) of Seabirds During Oceanic Longline Fishing Operations* ('the TAP') was released in 1998, outlining measures to reduce these interactions. Through specific fisheries regulations, the TAP is binding on longline fishers operating in Australia's nationally-managed fisheries.

A Seabirds Stakeholder Reference Group (SRG) has been established to further develop the AUS-NPOA-Seabirds. The SRG comprises relevant State and national agencies, fishery associations, conservation groups and scientists. The SRG aims to complete the AUS-NPOA-Seabirds during 2004 or 2005.

Actions under the existing TAP for nationally-managed longline fisheries will be designated as actions under the AUS-NPOA-Seabirds. Subject to agreement between relevant authorities, State-managed longline fisheries will also develop and implement measures to mitigate seabird by-catch within the framework of the AUS-NPOA-Seabirds.

Australia's National Plan of Action for the Conservation and Management of Sharks (AUS-NPOA-Sharks)⁴⁶

Australia is committed to implementing the IPOA-Sharks because expanding global catches of sharks have potential negative impacts on shark populations. Sharks' low fertility rates and generally small populations mean they are particularly vulnerable to (and slow to recover from) overfishing.

In April 2004, Australia finalised its National Shark Plan (AUS-NPOA-Sharks), based on a comprehensive Shark Assessment Report completed in December 2001 by a Shark Advisory Group. The report assessed the status of shark stocks in Australian waters and identified appropriate conservation and management issues.

⁴⁵ Australia supports and works closely with SeaNet, an environmental extension service to the Australian seafood industry that facilitates the development and use of fishing gear, technology and methods that minimise by-catch and improve the sustainability of fisheries. Operating through Ocean Watch Australia Ltd, SeaNet now has extension officers in all but one of the Australian States.

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The AUS-NPOA-Sharks, as endorsed by national and state/territory governments in 2004, addresses shark conservation and management issues through six key themes:

- reviewing existing conservation and management measures;
- improving conservation and management measures;
- changes to data collection and handling;
- research and development;
- education and awareness raising; and
- improved coordination and consultation.

The AUS-NPOA-Sharks will be submitted to the FAO and, given its relevance for migratory species, to the International Union for the Conservation of Nature.

ANNEX 4 – MEASURES AND ACTIONS BY AUSTRALIA'S STATE AND TERRITORY GOVERNMENTS TO ENSURE RESPONSIBLE FISHERIES MANAGEMENT

This Annex is a summary of the work of the fisheries authorities in Australia's states and territories in promoting and enforcing responsible fisheries management for the fisheries under their jurisdiction. It complements the descriptions of states' involvement in combating IUU fishing included in the main text of this AUS-NPOA-IUU.

Around 80% (in value terms) of Australia's wild capture fish production and all aquaculture production are managed by the six states and the Northern Territory. In keeping with the on-going 'work-in-progress' nature of the whole of the AUS-NPOA-IUU, information in this Annex will be updated periodically. Given the particular concern at the extent of IUU fishing in the abalone fishery, Attachment 1 to this Annex outlines action under way or planned to address that fishery.

As elsewhere, a reference to a 'state' or 'states' generally includes the Northern Territory. (Fisheries associated with Australia's *external* territories come under the jurisdiction of the national government).

The experience of one Australian state (NSW) is indicative of the nature of IUU fishing in state-managed fisheries:⁴⁷

- In commercial fisheries, the primary concern is of commercial abalone divers targeting over-quota (or otherwise illegal catches of) abalone as well as 'incidental' rock lobster; the non-reporting or under-reporting of finfish and prawns by commercial fishers; the handling of IUU fish by registered fish receivers; and the purchasing of 'black market' abalone and rock lobster by wholesale and retail fish outlets.
- In recreational fishing, organised criminal syndicates are engaged in the theft of abalone and, to a lesser extent, rock lobster and fin-fish; significant catches of fish and prawns are taken by quasi-commercial (but unlicensed and illegal) fishers; and there are illegal mid-level and high-level buyers and processors of illegally taken abalone, rock lobster and fin-fish.

The Australian states have the primary responsibility for public health. IUU fishing, in addition to threatening fishery sustainability and biodiversity, creates a risk to public health due to questionable food handling practices by unscrupulous operators – which in turn undermines public confidence in the legally taken and processed catch. The NSW Government has responded to this 'double jeopardy' by releasing '*A Vision for the NSW Seafood Industry*' which will achieve improvements in fisheries compliance through stronger action to stop IUU fishing, including oyster theft, and associated illegal sales that undermine legitimate seafood industry operations and present a community health risk and through providing a higher level of reporting compliance outcomes to stakeholders.

⁴⁷ NSW Fisheries believes the overall level of compliance with fisheries law by the commercial sector is high and that 'quasi-commercial' IUU fishing in the abalone, rock lobster and high value fin-fish sectors is that state's most significant issue in combating IUU fishing. Other states have similar views.

All states manage their fisheries under Fisheries Acts and Regulations. Many also operate, or are developing statutory management plans for specific fisheries (for example, in Queensland, for the east coast trawl, spanner crab and coral reef fisheries, in Victoria for abalone, rock lobster, giant crab and eels, in New South Wales for abalone and for rock lobster and in South Australia for abalone). Through these and other fisheries management strategies and arrangements, the more significant fisheries have generally moved from open access to rights-based quota-controlled management regimes. In some states, for example in NSW, the management of each major fishery includes the provision of policy and regulatory advice by independently chaired Management Advisory Committees (MACs). (MACs have also been established by AFMA for the major nationally-managed fisheries).

Following joint national and state decision-making over the past decade on the application of principles of environmentally sustainable development in natural resources generally, these principles have been incorporated into state Fisheries Acts (as well as the FMA 1991).⁴⁸ Effective fisheries management reduces the by-catch of associated non-target species and the harm to target species due to the taking of under-sized fish. The sustainable management of indigenous fishing effort is an important element of fisheries management in the NT and some other states. Some states have also written or are writing explicit Compliance Strategies for particular fisheries (for example, for the abalone and rock lobster fisheries in Victoria).

Commercial fishers in the states require licences to fish and most fisheries involve input and/or output controls – eg, on gear and equipment, seasons, area closures, numbers of licences, transferable quotas, total allowable catch, minimum legal size, by-catch reduction, etc. For example, in New South Wales all commercial fishers and fishing vessels must be licensed and there are penalties of up to \$55,000 for individuals and \$110,000 for corporations for breaches of fishing laws.⁴⁹ In the states generally, other penalties for non-compliance with licence conditions, include, imprisonment, seizure or forfeiture of boats, gear and catch, licence suspension, licence cancellation and forfeiture of fishing rights. Breaches of fish possession limits can also attract fines and imprisonment.

Possession and use of commercial fishing gear by unlicensed persons is illegal and attracts heavy penalties. In some states, such as NSW, the grant of a fishing licence is conditional on the applicant's having no record of any offence under any fisheries law (whether in that state or in another jurisdiction), including in relation to theft of fish or fishing gear or a boat, damage to gear or a boat, or assault of a fisheries officer, or the non-payment of a fee or other payment, and that the applicant has demonstrated the capacity and qualifications to successfully engage in commercial fishing operations.

⁴⁸ In NSW, for example, fisheries legislation aims to conserve and equitably share resources, ensure biodiversity is protected and that fisheries are managed sustainably. Currently, all designated fishing activities are being assessed to ensure they do not pose a significant threat to the effective conservation and management of living aquatic resources, including biodiversity, and that they provide social and economic opportunities to other stakeholders. The outcomes of these assessments include the implementation of fishery-specific codes of conduct, educational and compliance strategies, structural adjustment programs and the use of stock assessment and observer programs. All commercial fisheries in NSW are due to have been assessed on this basis by the end of 2004.

⁴⁹ NSW proposes to implement enhanced sanctions against fisheries violations, aimed in particular at habitual offenders, including the operation of a 'penalty point' system and suspension or forfeiture of fishing rights for serious offences. Increased penalties for unlicensed quasi-commercial fishing are also being introduced.

South Australia undertakes prior history checks with other state fisheries agencies for new applicants seeking entry to its fisheries. All state fisheries authorities require the completion of fishery-related records, such as catch and disposal records, daily log-book records, prior-to-fishing reports and documentation of sales to processors or direct to consumers. Some state-managed fisheries require VMS (see paragraph 51 in the main AUS-NPOA-IUU text), which together with other data enables compliance resources to be more effectively targeted to high risk operations.

Recreational fishers in some states also require licences (for example, in Tasmania, for rock lobster and abalone) and in all states are subject to input and/or output controls – such as bag and boat limits, limits on the legal size of fish, gear restrictions and prohibitions on the sale of their catch. Nevertheless, fisheries enforcement resource limitations necessarily result in enforcement priority being given to commercially licensed fisheries and this can lead to significant levels of IUU fishing in the recreational sector and the development of a ‘black market’ in the fish that are caught thereby. State fisheries authorities do not, however, believe the extent of such activity is putting fish stocks at risk – except in some areas in the case of abalone (for which preventative measures against IUU fishing in both commercial and non-commercial sectors are described in Attachment 1 to this Annex). The sale of fish by unlicensed recreational fishers attracts high penalties. In recreational fisheries with daily bag limits, however, breaches of those limits can be difficult to establish due to the difficulty of obtaining sufficient evidence for a successful prosecution.

IUU fishing has been a prominent aspect of a review of the scope and extent of crime in fisheries in New South Wales by a former Commissioner of the Australian Federal Police. The review, completed in mid 2004, found that the illegal harvesting and black marketing of fish is serious, widespread, entrenched and growing in NSW. It identified deficiencies in existing compliance training and resources and recommended measures to strengthen current legislation and compliance efforts to combat IUU fishing. The review is also expected to recommend reductions in bag and possession limits for key recreational species (including abalone, high priced fin-fish and crustaceans) and to propose significant improvements in the enforcement skills and capacities of fisheries officers in targeting serious fisheries crimes and reducing the incidence of IUU fishing. NSW Fisheries are currently developing strategies to address the issues raised by the review and ensure more effective efforts are employed to combat IUU fishing and marketing.

Significant resources are allocated to fisheries compliance by the states. For example, five ‘mainland’ states (Western Australia, South Australia, Victoria, New South Wales and Queensland) currently budget some \$54 million annually for compliance (in part using funds from licence fees and other charges) and employ around 540 compliance-related staff as well as nearly 430 fisheries (field) officers in 98 regional fisheries stations. Nevertheless, the vast geographical area of Australian waters under state fisheries management means that the finite resources available for MCS do limit the extent of effective detection and prosecution of IUU fishing offences, particularly by unlicensed non-commercial fishers.

Fisheries officers need to possess high level investigative and enforcement skills to effectively combat IUU fishing. Some states, for example NSW, have identified the need to strengthen their fisheries enforcement training programs, including by introducing legislative and prosecutions workshops and field-based crime detection training.

State and national fisheries authorities have established a National Fisheries Compliance Committee (NFCC) which meets regularly to collaborate and exchange information and views on fisheries compliance, establish compliance benchmarks and agree on joint, cross-jurisdictional action when appropriate.⁵⁰ The NFCC has prepared a National Compliance Strategy for 2003–2008, based on promoting fisheries compliance through education, cooperation and deterrence. Relevant state and national police and quarantine agencies are also ‘parties’ to the Strategy. Future reviews of the Strategy will ensure a strengthened contribution to combating IUU fishing. New Zealand participates in the NFCC, providing valuable bilateral perspectives on fisheries compliance for all jurisdictions.

This AUS-NPOA-IUU has identified the clear need for all Australian jurisdictions to cooperate in combating IUU fishing through cross-border operations, the sharing of fisheries-related intelligence and other information, joint research on fisheries compliance and the adoption of uniform processes and procedures. These requirements will continue to call for the provision of adequate and appropriate resources – financial and technical – in the ever more complex tasks of preventing, deterring and eliminating IUU fishing.

⁵⁰ The NFCC is implementing a National Docketing Scheme (NDS), referred to elsewhere in this document, and also discusses VMS issues, fisheries enforcement performance indicators, risk management and compliance-related research. NFCC also coordinates fishery officer training (including national standards and accreditation) and consideration of legislative initiatives, and oversees the annual Australasian Fisheries Law Enforcement Officers Conference (AFLEC).

ATTACHMENT 1

Abalone – Australian Action to Combat IUU Fishing

Australia is the world's largest producer of wild-caught abalone, with Tasmania, Victoria and South Australia the states with the highest catches. The annual value of recorded production of Australian abalone in the three years 2000–01 to 2002–03 averaged over \$240 million. Abalone is a compact, high value, easily transported product in great demand in Asia, at wholesale prices of between \$100–165 a kilogram, depending on species and demand.

Illegally acquired abalone is readily concealed and relatively easily exported in clandestine shipments. In taking a mollusc that is found in shallow waters close to the shore, abalone divers do not require sophisticated or expensive equipment.⁵¹ Taken together, these factors make abalone a prime target species for IUU fishing, in the form of over-fishing by licensed operators as well as illegal fishing for sale by unlicensed fishers. The overall level of IUU fishing for abalone in Australia is uncertain. Although not at this stage causing a serious threat to the general sustainability of the abalone stock, IUU fishing in some particular areas (such as the Mornington Peninsular in Victoria and in parts of South Australia) has led to serious depletion. Determinations of total allowable catch are generally based on assessments of known legal and estimated illegal total catches on the sustainability of the fishery. In Tasmania, for example, the status of abalone stocks is generally inferred from indicators of abundance irrespective of the size of the catch from the legal fishery or from illegal activity.

National and state fisheries authorities have agreed in principle to have the export of abalone prohibited under the *Customs Act 1901* and the *Customs (Prohibited Export) Regulations 1958* unless accompanied by approved documentation from the Australian Quarantine and Inspection Service (AQIS) or from the National Docketing System (NDS). Such abalone export controls require legislative and regulatory amendments in all jurisdictions, which are currently under consideration. The Australian Fisheries Management Forum (AFMF) is also seeking support from the Australian Crime Commission (ACC) for the elevation to indictable offences of crimes related to the poaching of abalone.

All states in Australia have agreed to implement the NDS (which requires documentation to be kept and provided by all fishery operators and fish receivers and processors for all fish bought and sold in specified fisheries) to monitor abalone fisheries.

The states have also implemented other specific regulatory measures to combat abalone poaching. For example, Victoria requires fish receivers (abalone) licence-holders or their agents to mark or label abalone, before it leaves the licensed premises, with the name of the licence-holder, the approved AQIS or trader ID number, the net weight and the date of packaging. Moreover, it is an offence in Victoria to sell abalone in any form (in excess of the catch limit of 10) without accompanying documentation (seller, address, document number, date of sale, quantity, product description, processor name and address or AQIS/Trader ID number, and date packaged). Victoria has also implemented a specific

⁵¹ Some degree of sophistication is employed by organised criminal groups to avoid detection, for example the use of infra-red night vision equipment to enable night diving and the use of aircraft to move divers to remote areas.

IUU Abalone Catch Monitoring System, to be used by regional fisheries managers in order to assess the extent of IUU fishing for abalone and its impact on the sustainability of the resource. The data obtained will be used for abalone TAC determinations and to assess whether targets for reductions in IUU fishing for abalone are being met.

Other measures being implemented or developed by Victoria include making abalone poaching and trafficking indictable offences (providing for imprisonment for up to five years and enabling national anti-crime agencies to investigate such activities – consistent with the action being sought from the ACC), providing clear size distinctions between legally acquired wild-caught and aquaculture-grown abalone (to combat the ‘laundering’ of illegal wild product via aquaculture operations), allocating a large part (around 65%) of its compliance budget to abalone compliance and enforcement, and working with other state and national jurisdictions with the aims of providing uniform measures nationally and of avoiding cross-jurisdictional barriers to effective enforcement.

Tasmania requires stringent reporting and monitoring of the abalone fishery, combined with targeted surveillance. As in other states, a stringent set of reporting and documentation is required for the receipt and movement of abalone, including the use of telephone reports by divers and processors before certain activities can be undertaken. Abalone fisheries enforcement is carried out by Tasmania Police, supported by a dedicated Quota Audit Unit within the state’s fisheries authority. Enforcement officers liaise closely with counterparts in other jurisdictions.

South Australia manages its abalone fishery by limiting entry to the legal fishery, prohibiting more than a single diver taking abalone on a given licence at any given time, strictly regulating possession controls during diving, transporting and storing activities, requiring commercially taken abalone to be landed in South Australia and sold only to a registered abalone-endorsed processor, applying severe penalties, including imprisonment, for non-compliance, applying strict possession limits to non-licensed recreational fishers, requiring the keeping of catch and disposal records and the prior reporting of ‘fishing days’ in the commercial sector, undertaking joint operations with specialist police divisions against organised criminal groups engaged in illegal abalone fishing and trade and operating ‘benchmark’ audits with other states on interstate movements of abalone.

In NSW, commercial and recreational abalone catches are monitored closely to ensure quota compliance. Reports must be submitted within 24 hours of landing and include records of the sub-zone where the fish were taken, the number of fish and the validated weight of the catch. Audits are conducted to ensure the integrity of information. NSW employs a full time fisheries intelligence analyst and also has specific protocols and procedures in place with other abalone-producing states and with national authorities.

There is evidence that significant quantities of abalone are presently being exported illegally by criminals, who effectively bypass national border controls through splitting parcels of the product into small (ostensibly legal) ‘recreational’ amounts in the personal luggage of departing tourists. Possible remedies include the export prohibition referred to above, the training and use of sniffer dogs and customs officers to better detect and deter illegal abalone exports and more effective publicity of successful prosecutions.

Illegal abalone operations have also been a prominent aspect of a review of the scope and extent of crime in fisheries in New South Wales by a former Commissioner of the Australian Federal Police. The review, completed in early 2004, has identified deficiencies in existing compliance training and resources and NSW Fisheries are currently developing strategies to address these issues and ensure more effective efforts are employed to combat IUU fishing. NSW also operates an ‘abalone rewards’ scheme, which provides rewards of up to \$1,000 to persons who provide information that leads to the conviction of IUU abalone fishers.

The outcomes of successful prosecutions are provided to media outlets by the states, and they are looking at ways to increase the impact of such reporting.

Although some states, for example Queensland, have no abalone fishery, abalone processing and marketing takes place in their areas of jurisdiction. Monitoring this sector can require significant resources, but is an important element in the overall nationally coordinated efforts to combat illegal operations.⁵²

Recognising the high demand for abalone in various Asian countries, and that ethnic communities in Australia may have insights into some of the social and cultural determinants of this demand, Victoria has undertaken social research, in conjunction with those communities, to develop more effective strategies to counter illegal abalone fishing. This work has involved the development of multilingual brochures, signs, advertising and displays, selecting and training multilingual compliance officers, and a detailed study of the ‘drivers’ of behavioural change, both for adults and their children.

Outcomes from the study cover categories of abalone collection, cultural attitudes, motivation for illegal collection, knowledge and understanding of regulations, enforcement awareness, sources of information, the likely deterrent effect of harsher penalties and other enforcement strategies, employment of ethnic fisheries officers, and an assessment of the likelihood of generational change in ‘second generation’ populations. These results are being incorporated progressively into Victoria’s procedures for combating IUU fishing for abalone, together with increased penalties and more intensive enforcement efforts.

⁵² The successful outcome in the *Tat Sang Loo* case (unreported judgement of the Dandenong, Victoria, Magistrates Court, 17 March 1999) in which Loo was fined more than \$1 million and imprisoned for 18 months for illegally possessing, receiving and consigning almost ten tonnes of abalone, involved extensive cooperation between fisheries and police authorities in Victoria, New South Wales and Queensland.

ANNEX 5 – AUSTRALIAN AND PAPUA NEW GUINEA COOPERATION IN COMBATING IUU FISHING

The Torres Strait Treaty between Australia and Papua New Guinea (PNG)⁵³ provides, among other things, for the conservation and management of fish stocks in the Torres Strait. The Treaty establishes a ‘swimming fisheries resources delimitation line’ between the two countries and a Protected Zone which covers a large part of the Torres Strait on both sides of the fisheries line. The Protected Zone was established to protect the traditional lifestyles and fishing of the indigenous Australians and Papua New Guineans living in and moving throughout the Torres Strait region. Fisheries on the Australian side of the fisheries line are managed jointly by the Australian and Queensland Governments through a Joint Authority, which also comprises the Chair of the Torres Strait Regional Authority, which represents indigenous interests in the Torres Strait.

The key features of the Torres Strait Treaty in relation to fisheries and the prevention of IUU fishing include:

- an obligation on both parties to cooperate in the conservation and management of fisheries in the Protected Zone and to consult on administrative and other arrangements to resolve any problems and to share information on relevant laws, regulations and procedures;
- fisheries resource sharing provisions which allow for each party to exploit agreed shares of particular commercial fisheries resources in the area of the Protected Zone under the jurisdiction of the other party;
- commercial fishing licence-issuing and endorsement arrangements which provide for nominated fishers of one party to be authorised by the other party to fish in that other party’s area of jurisdiction within the Protected Zone under the applicable resource sharing provisions and subject to the fisher’s compliance, when so fishing, with the other party’s fisheries laws and regulations;
- a prohibition on any third party fishing in the Protected Zone unless both Treaty parties agree and a requirement for the Treaty parties to consult over any proposed fishing in the Protected Zone involving third party equity in a joint venture or use of a fishing vessel flagged to a third party or crewed substantially by third party nationals;
- the operation of fisheries inspection and enforcement arrangements, to prevent violations of fisheries laws and regulation in the Protected Zone, that include exchanging personnel, the development of consistent fisheries laws and regulations by both parties, the creation of offences under each party’s laws with respect to unlicensed or unauthorised fishing (or to a breach of fisheries laws or regulations) in the other party’s area of jurisdiction;
- an obligation for each party to investigate suspected offences against its fisheries laws or regulations by its nationals or by vessels flying its flag and to take corrective action (investigation, apprehension, prosecution, the imposition of penalties or the cancellation or suspension of a licence, as appropriate) against offenders;

⁵³ *Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area Between the Two Countries, Including the Area Known as Torres Strait, and Related Matters*, signed at Sydney, 18 December 1978 and entered into force on 15 February 1985.

- provisions for suspected offenders who are nationals of one party but are apprehended by the other party to be handed over to the first party for the purposes of corrective action on the basis of an assurance that the matter will be dealt with appropriately and subject to the apprehending party's right to detain the suspect for as long as necessary to conduct an expeditious investigation into the offence and to obtain evidence (which evidence must be made available to the prosecuting party, which then has an obligation to facilitate the admission of that evidence into any proceedings taken against the suspect); and
- the right of the first apprehending party, in the event that the party of nationality of the offender cancels or suspends the offender's licence or authorisation, to also cancel or suspend any licence or authorisation the offender may have obtained from the first apprehending party.

Australia and PNG hold regular bilateral discussions on fisheries conservation and management under the Treaty, most recently in late 2003 to agree on measures for specific fisheries for the 2004 season, including for prawns, Spanish mackerel, pearl shell and tropical rock lobster. Typically, these arrangements cover the areas where fishing is permitted, the respective country shares of any agreed total allowable catch, the levels of fishing effort each country will authorise in its own area of jurisdiction for fishers from the other country, measures for surveillance and enforcement of the agreed arrangements, the collection and exchange of data and arrangements for consultation and dispute settlement. In some cases, for example for tropical rock lobster and prawns, the agreed arrangements also cover defined areas adjacent to the Protected Zone within the jurisdiction of one or other Treaty party.

From Australia's viewpoint, several issues are of particular relevance in the context of combating IUU fishing:

- An area of PNG jurisdiction outside and to the west of the Protected Zone, known as the 'dogleg', is attractive to IUU fishers from Indonesia, and elsewhere. Australia has offered to fly special surveillance flights over this area, both to assist PNG's management of the area and to help dissuade these IUU fishers from moving from the dogleg into Australian waters in the Protected Zone – an issue of increasing concern to both the Australian and Queensland Governments. Sightings from the area by Australian agencies are reported to the PNG authorities and PNG patrols in the dogleg have increased. The successful apprehension of some IUU fishers through these cooperative arrangements has given impetus to this work.
- In recent years the level of fisheries cooperation under the Treaty has been expanded. For example, the number of joint patrols in the Protected Zone has increased and consultations on the further development of consistent laws and regulations have been productive
- In late 2002, an MoU under the *Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region* was signed by Australia and PNG. The MoU provides for cooperation in the provision of personnel and the use of vessels, aircraft and other items of equipment for fisheries surveillance and law enforcement purposes. Among other things, the MoU provides for officers of each party to perform fisheries surveillance and law enforcement functions on behalf of that party while on board a vessel or aircraft of the other party. Some action on this basis has been taken since the MoU was signed.

- At present, rapid on-the-water enforcement action is difficult in some parts of the Protected Zone because of the lack of accurate surveys of the (often shallow) waters in those areas and the risk of accidents if IUU fishers are pursued there. Australia is progressively completing new surveys of these areas.
- There are several further initiatives that would strengthen fisheries conservation and management in the Torres Strait, including the provision and equipping of a fisheries-dedicated vessel by Australian authorities for conducting joint operations with PNG, and the holding of more frequent, ideally annual, joint enforcement meetings. In addition, there would be benefits for fisheries enforcement in the Torres Strait if new training programs for ‘cross-endorsed’ fisheries officers were arranged, particularly to increase their understanding of each party’s fisheries legislation and operational procedures.

ANNEX 6 – AUSTRALIAN PARTICIPATION IN THE WORK OF REGIONAL FISHERIES MANAGEMENT ORGANISATIONS TO COMBAT IUU FISHING UNDER PARAGRAPHS 80–82 OF THE IPOA-IUU

The major activities (and challenges) in combating IUU fishing through CCAMLR and CCSBT have been outlined in the main text of the AUS-NPOA-IUU. The table in this Annex summarises Australia's perspectives on measures implemented (or under consideration) by the major RFMOs to which it belongs which are consistent with the provisions of paragraphs 80–82 of the IPOA-IUU.

Paragraph 80 of the IPOA-IUU calls for a series of specific actions through RFMOs to combat IUU fishing, paragraph 81 seeks the provision of timely information on each RFMO's efforts to combat IUU fishing to FAO and other relevant RFMOs and paragraph 82 calls for RFMOs to determine appropriate policy objectives, institutional mechanisms and coordination with other RFMOs in their work on IUU fishing.

Where there are elements of these paragraphs not currently being implemented that Australia considers would be effective in combating IUU fishing, Australia will work with like-minded RFMO members to seek support for their implementation as soon as possible.

At the first meeting of the WCPFC, the Commission adopted procedures for its record of fishing vessels, authorisations to fish and specifications for the marking and identification of fishing vessels. The Commission further adopted the procedures for Cooperating non-members which designated States that had participated in the Multilateral High-Level Conference and the Preparatory Conference as Cooperating non-members for an interim period. The Commission took note of the work undertaken in the Preparatory Conference and in the Scientific Coordinating Group concerning management options for the fisheries covered by the Convention. Australia will work to ensure that the conservation and management measures ultimately agreed by the WCPFC include measures to implement the IPOA-IUU.

Australia's participation in and support for the FFA's work in combating IUU fishing is outlined in Annex 7. Much of that work will, in due course, be incorporated into that of the WCPFC.

IPOA-IUU Paragraph	CCSBT	CCAMLR	IOTC
80.1 Institutional strengthening and capacity enhancing	Commission has given priority to IUU fishing issues.	Australia seeking stronger cooperation from non-member States.	Development of measures against non-Contracting Parties.
80.2 Development of compliance measures	See below.	See below.	See below.
80.3 Mandatory reporting	Catch and trade reporting.	Pursuing adoption of an electronic CDS and improvements to the recently agreed centralised VMS.	Vessel register, including IUU vessel register; TIS for bigeye tuna; Statistical reporting.
80.4 Exchange information on IUU fishing vessels	Discussed in Commission meetings.	IUU fishing a major issue for member States in discussions of the CCAMLR Standing Committee on Implementation and Compliance. Enhanced IUU Vessel List for Contracting Parties and established a Licensed Vessels List.	Annual reports to IOTC on IUU vessels.
80.5 Maintain fishing vessel records (both authorised and unauthorised)	List of authorised vessel kept.	Maintains publicly available lists of all CCAMLR licenses fishing vessels and IUU vessels (see 80.4).	IOTC vessel register; IUU vessel register.
80.6 Use trade information to monitor IUU fishing	TIS implemented; Australia seeking extension to cover all catches (para 83).	CDS implemented; Australia seeking to enhance CDS and is participating in trial of electronic CDS.	TIS for bigeye tuna; Australia is seeking CDS for all IOTC-managed fisheries.
80.7 Develop MCS	VMS operated by majority of members.	VMS in place and centralised VMS recently agreed.	VMS for all fisheries.
80.8 Develop boarding and inspection regimes		Australia may investigate seeking to strengthen the inspection system in CCAMLR.	Port inspections regime implemented.
80.9 Develop observer programs	CCSBT observer program implemented.	Australia participates in CCAMLR's international scientific observer scheme, including through bilateral arrangements with New Zealand and South Africa.	Pilot observer program operating; Australia seeking fuller implementation.
80.10 Market related measures	TIS implemented. Other trade-related measures applied against non-members.	CDS in place. Trial of electronic CDS under way, with Australia supporting its global application.	Trade-related measures against FOC vessels.
80.11 Define basis of presumption of IUU fishing	Based on the IPOA-IUU.	Any vessel not authorised by CCAMLR to fish in the CCAMLR region.	Any vessel flying the flag of a non-Contracting Party and having harvested tuna in the IOTC area.
80.12 Develop public education programs		Australia publicises CCAMLR-related issues in national and international media and other forums.	
80.13 Develop action plan	CCSBT has developed an action plan.	CCAMLR Secretariat has developed a draft action plan for Members' consideration.	

IPOA-IUU Paragraph	CCSBT	CCAMLR	IOTC
80.14 Examine chartering arrangements			
81.1 Report extent and nature of IUU fishing	Information exchanged at CCSBT meetings.	Australia reports on this within CCAMLR and more widely (see 80.12). Annual CCAMLR reports also cover IUU fishing.	Information exchange at IOTC meetings; publication of IUU vessel lists.
81.2 Report measures to combat IUU fishing	Information exchanged at CCSBT meetings.	See 80.12, 81.1.	Annual reports at IOTC meetings.
81.3 Report on records of authorised fishing vessels	Done under the FAO Compliance Agreement, to which most members have acceded.	CCAMLR maintains a publicly available list of licensed vessels. Australia also to report to FAO under Compliance Agreement.	Included in IOTC annual reports
81.4 Report on records of IUU fishing vessels	Records not currently kept.	IUU Vessel Lists details, to which Australia contributes, are reported (see 81.1).	Included in IOTC annual reports.
82.1 Determine policy objectives re IUU fishing	Included in strategy for non-member accession or compliance.	Included in draft action plan (see 80.13).	
82.2 Strengthen RFMO institutional mechanisms	Strategy for non-member accession or compliance is achieving this.	Australia working with like-minded member States. CCAMLR decision-making rules an issue (see para 98).	Consultation with other RFMOs on developing a uniform statistical reporting system.
82.3 Coordinate with other RFMOs on information, enforcement and trade aspects	Coordination with ICCAT on TIS; also through exchange of vessel register information.	Exchange of experience occurs (eg, CCSBT TIS and CCAMLR CDS). Also cooperating with CITES on certification and trade. Making Licensed Vessel List and IUU Vessel Lists available to other RFMOs.	Australia seeking more effective measures in IOTC.
82.4 Ensure timely and effective implementation of measures against IUU fishing	CCSBT measures reviewed annually.	A priority for Australia (see, eg, 80.1, 80.3, 80.6, 80.7, 80.8, 80.10, 82.2).	

ANNEX 7 – AUSTRALIAN SUPPORT IN COMBATING IUU FISHING THROUGH THE FORUM FISHERIES AGENCY OF THE PACIFIC COMMUNITY AND THE OCEANIC FISHERIES PROGRAM OF THE SECRETARIAT OF THE PACIFIC COMMUNITY

Introduction

As the largest developed country member of the Pacific Community,⁵⁴ most of whose members are developing small island States, Australia has a particular responsibility to assist the developing country members in the conservation and management of regional fish stocks and the protection of the marine environment and its ecosystems. In the specific context of working cooperatively to combat IUU fishing, the Community works primarily through the Forum Fisheries Agency (FFA) and the Oceanic Fisheries Program (OFP) of the Secretariat of the Pacific Community. The focus of this work is on exchanging information and data and developing joint policies and programs that enhance responsible fisheries practices, maximise fishery-related benefits to Community members and as far as possible prevent, deter and eliminate IUU fishing.

In recent years, FFA members initiated and led the development of a major new regional fisheries management organisation (RFMO), the Western and Central Pacific Fisheries Commission (WCPFC), which was formally established when the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* ('the Convention') entered into force in June 2004. These arrangements are among the first in the world to give regional effect to the *1995 UN Fish Stocks Agreement*. They cover the conservation and management of tunas and billfish that migrate through the region and represent, for many of the island States, their most significant natural resource, economic development opportunity and food supply. Australia has provided special financial contributions over the past several years to assist the WCPFC preparatory working program.

Australia also contributes substantially to the work of the FFA and OFP, both through financial contributions and, where appropriate, the provision of technical expertise.⁵⁵ Examples include the donation of patrol boats for fisheries enforcement and other purposes to most island States, the development, funding and installation of a regional VMS, the provision of capacity-building in fisheries legislation and management through education and training programs and the operation of long-range aerial fisheries surveillance patrols. Australia also made special financial contributions towards the preparatory work for the WCPFC and the Convention. In the following sections, the focus is on elements that contribute to responsible fisheries and the prevention of IUU fishing.

⁵⁴ The Pacific Community (formerly known as the South Pacific Forum) comprises Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. The Secretariat of the Forum Fisheries Agency of the Community is based in Honiara on the Solomon Islands.

⁵⁵ Australia and New Zealand each contribute 30% of the budget allocations of the FFA, the remaining island States contributing the balance (roughly 3% each).

Forum Fisheries Agency

The FFA enhances responsible fisheries in the central and western Pacific through its fisheries MCS programs.⁵⁶ These operate both within FFA member EEZs and on the regional high seas.

In an early and innovative MCS initiative, *Harmonised Minimum Terms and Conditions for Foreign Fishing Vessels* (MTC) were adopted by the South Pacific Forum in 1982 and have since been revised several times. Currently, the MTC include uniform vessel identification (based on FAO standards), mandatory catch and position reporting (including participation in a regional VMS), compulsory registration of vessels on a regional register of vessels in good standing (vessels without good standing on the register shall not be authorised to fish in the region), and provisions regarding the use of observers, catch and effort log-sheets, the appointment of locally based agents, port access and port State controls (including boarding powers), flag State responsibilities, the marking and use of fish aggregating devices (FADs), pre-fishing inspections, trans-shipment conditions and requirements for foreign fishing vessels in transit through the region.

Other measures being implemented by FFA members include the *Niue Treaty* (which provides for cooperation in fisheries surveillance), the *Palau Arrangement* (which regulates purse seine tuna fishing through effort controls, an embargo on licensing flag-of-convenience vessels, and other management measures) and special arrangements with the USA on exchanging fisheries intelligence and personnel, on fisheries enforcement training and on the USA's taking action under its own laws (in particular the 'Lacey Act') against violations of FFA member fisheries laws and regulations. In addition, the *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* provides for US fishing vessels to fish for tunas (other than southern bluefin tuna) in designated parts of the region (the Treaty Area), subject to the payment of access fees, the provision of technical and economic support to the Pacific Island States parties and the enforcement of relevant MCS measures.

In addition to the specific support provided by Australia to the FFA (for VMS, aerial surveillance, patrol boats, capacity-building and WCPFC preparations), Australia provides significant other donor funds to individual Pacific Island States for MCS-related purposes.

Oceanic Fisheries Program

The OFP was established in 1980. Its mission is 'to provide member countries with the scientific information and advice necessary to rationally manage fisheries exploiting the region's resources of tuna, billfish and related species'. The OFP's three primary functions cover statistics and monitoring, tuna ecology and biology, and stock assessment and modelling. The ongoing expenses of the OFP are currently funded by extra-budgetary contributions from Australia, France, and New Zealand and, since 1997, a contribution from the South Pacific Community's core budget (to which Australia is a major contributor).

⁵⁶ For a more detailed outline of the Agency's MCS programs, see Andrew H Richards, *Fisheries Monitoring, Control and Surveillance in the Western and Central Pacific Ocean Region*, FFA Report #03/25.

Funding for specific projects during the past five years has also been received from the Australian Agency for International Development (AusAid) and the Australian Centre for International Agricultural Research (ACIAR). Funds have also been provided by the European Union, FAO, the University of Hawaii Pelagic Fisheries Research Program, the Global Environment Facility (GEF), the Republic of Korea and Taiwan.

AUSTRALIAN NATIONAL PLAN OF ACTION

To Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

IUU fishing seriously damages fish stocks, associated species and the marine environment in waters of national jurisdiction and on the high seas.

Australia played a leading role in the development and adoption of the IPOA-IUU by the Food and Agriculture Organisation of the United Nations (FAO).

This AUS-NPOA-IUU is Australia's initial National Plan of Action to Prevent, Deter and Eliminate IUU Fishing. It has been developed through extensive consultation with relevant stakeholders in Australia, including state and territory government fisheries agencies, national government departments and agencies, fishing industry representatives, and non-governmental organisations concerned about the conservation and sustainable management of fisheries and the preservation and protection of related species and biodiversity.

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