

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

Background and Overview

- 5.1 The *Southern Indian Ocean Fisheries Agreement* (the Indian Ocean Agreement) and the *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (the Pacific Ocean Convention) are considered together here because they are related treaties and have common objectives and obligations.
- 5.2 Australia is already bound by a number of treaties relating to international fisheries, including:
- the *United Nations Convention on the Law of the Sea*;
 - the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UNFSA); and

- the *Convention on the Conservation of Antarctic Marine Living Resources*.¹

High seas fisheries

- 5.3 Both the Indian Ocean Agreement and the Pacific Ocean Convention establish a mechanism for signatories to manage and conserve non highly migratory fisheries resources in the high seas of each ocean.²
- 5.4 The high seas are defined as those areas of the ocean that do not fall within the 200km exclusive economic zones of nations. As a consequence, high seas fisheries are not subject to regulations that apply within a country's exclusive economic zone.³ This is called the 'freedom of the high seas'.⁴
- 5.5 High seas fisheries are characterised by the use of distant water fishing fleets. Distant water fishing fleets remain at sea for extended periods of time far from their port of origin. These fleets are mobile and opportunistic, targeting fish species according to market demand and information on available stocks. The activities of distant water fishing fleets are largely unmonitored.⁵
- 5.6 Because no national laws can apply on the high seas, the only mechanism for imposing regulation on a high seas fishery is by treaty. A number of treaties already exist to regulate fishing on the high seas. Most notable for Australia are:
- the *Convention for the Conservation of Southern Bluefin Tuna*;
 - the *Agreement for the Establishment of the Indian Ocean Tuna Commission*;
 - the *International Convention for the Regulation of Whaling*; and

1 National Interest Analysis [2011] ATNIA 23, *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (Auckland, 14 November 2009) [2010] ATNIF 5, (hereafter referred to as the Pacific Ocean Convention NIA), para. 9.

2 National Interest Analysis [2011] ATNIA 24, *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, (hereafter referred to as the Indian Ocean Agreement NIA), para. 4.

3 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

4 The freedom of the high seas is codified in Article 87 of the United Nations Convention on the Law of the Sea.

5 Bureau of Rural Sciences, *Distant Water Fishing Fleets*, <<http://www.daff.gov.au/brs/fisheries-marine/info/distant-fleets>>, viewed on 17 October 2011.

- the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*.⁶

Australian high seas fishing fleet

- 5.7 Australian flagged vessels fishing in either area are required to have a high seas permit. High seas permits requirements were strengthened in 2006 to require more detailed information on the method of fishing to be used, the species targeted and the proposed area of operation. Permits now also require observers to be present on all fishing trips. In addition, the areas that can be fished under the high seas permits have been restricted to areas previously fished.⁷
- 5.8 At the time of writing, there are only eight high seas fishing permits valid in Australia,⁸ implying that Australian participation in these fisheries is not significant at present. Representatives of the Department of Agriculture, Fisheries and Forestry advised the Committee that, prior to the strengthening of the licensing requirements, there had been up to 30 Australian high seas fishing licences.⁹

Non highly migratory species

- 5.9 On the high seas, the treaties listed above principally apply to the category of highly migratory species. A list of highly migratory species is contained in Annex I of the *United Nations Convention on the Law of the Sea*. Highly migratory species include species of tuna, mackerel, pomfrets

6 Department of Foreign Affairs and Trade, *Australian Treaties Database*, <<http://www.dfat.gov.au/treaties/index.html>>, viewed on 2 November 2011.

7 Bureau of Rural Sciences, *Fishery Status Reports 2009, 2010*, p. 376.

8 Australian Fisheries Management Authority, *Fishing and Carrier Permits Register, High Seas Register*, <<http://www.afma.gov.au/resource-centre/publications-and-forms/fisheries/public-registers/>> Viewed on 17 October 2011

9 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 21

(fanfish), marlins, sailfish, swordfish, sauries (needle fish), dolphin, oceanic sharks, and cetaceans (whales).¹⁰

- 5.10 The other fish species that inhabit the high seas are classified in the *United Nations Convention on the Law of the Sea* as sedentary species. This Convention specifically excludes from its application sedentary species that inhabit the high seas.¹¹ Sedentary species are defined as:

...organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.¹²

- 5.11 The Indian Ocean Agreement and the Pacific Ocean Convention apply to non highly migratory fisheries resources, a slightly different definition to that used in the *United Nations Convention on the Law of the Sea*. Nevertheless, the Indian Ocean Agreement and the Pacific Ocean Convention define non highly migratory species in relation the definitions used in the *United Nations Convention on the Law of the Sea*, specifically, non highly migratory species are defined as:

...resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:

- (i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to Article 77(4) of the 1982 Convention; and
- (ii) highly migratory species listed in Annex I of the 1982 Convention.¹³

- 5.12 The current fishing method within the Indian Ocean Agreement area is trawl fishing¹⁴ using a large net dragged behind a boat.¹⁵

- 5.13 In the Pacific Ocean Convention area, fishing generally involves targeting pelagic or demersal species (that is, species that inhabit the bottom of the ocean, or surface waters, respectively). Methods used include long lines

10 United Nations, *United Nations Convention on the Law of the Sea*, Annex I, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, viewed on 2 November 2011.

11 United Nations, *United Nations Convention on the Law of the Sea*, Article 68, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, viewed on 2 November 2011.

12 United Nations, *United Nations Convention on the Law of the Sea*, Article 77, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, viewed on 2 November 2011.

13 *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, Article 1.

14 Bureau of Rural Sciences, *Fishery Status Reports 2009, 2010*, p. 375.

15 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

(fishing lines containing many hooks along their length), gill nets, or trawling.¹⁶

Origin of the treaties

- 5.14 Australia has an interest in both the Indian Ocean and Pacific Ocean fisheries, and the Australian fishing industry has been active in these fisheries for some decades. The National Interest Analysis (NIA) for the Pacific Ocean Convention claims that accession to these Agreements will allow the Australian fishing industry continued access to these fisheries.¹⁷
- 5.15 Negotiations for the Indian Ocean Agreement began as a result of the experiences gained by Australia and a number of other states bordering the southern Indian Ocean as a result of the poor management of the Orange Roughy¹⁸ stock in the region. Overfishing caused serious depletion of the stock, severe environmental damage, and the collapse of the fishery, with related social and economic costs for the fishing community.¹⁹
- 5.16 Australia commenced corresponding negotiations with New Zealand and Chile with a view to developing a similar arrangement in the Pacific Ocean.²⁰

The precautionary approach and the ecosystem based approach

- 5.17 Both treaties promote the objective of long term conservation and sustainable use of fisheries resources. According to the NIAs, The treaties use the 'precautionary approach' and the 'ecosystem based approach' to meet this objective.²¹
- 5.18 The precautionary approach assumes that:

16 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

17 Pacific Ocean Convention, NIA, para. 6.

18 Orange Roughy is a deep sea, cold water species that grows to about 50cm in length and can live for up to 140 years.

19 Indian Ocean Agreement, NIA, para. 7.

20 Pacific Ocean Convention, NIA, para. 10.

21 Indian Ocean Agreement, NIA, para. 4.

...where there are threats of serious irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.²²

5.19 The ecosystems approach to fisheries management was developed by the Food and Agriculture Organisation of the United Nations (FAO) in the mid 1990s as a mechanism for reconciling the ecological needs of a fishery with the requirement to provide food and employment to those who work the fishery.²³

5.20 The FAO technical definition of the ecosystem approach is as follows:

An ecosystem approach to fisheries strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.²⁴

5.21 The ecosystem approach addresses the need to cater both for human as well as ecosystem well being.²⁵ The ecosystem based approach is already incorporated into a number of international fisheries treaties, including:

- the 1995 United Nations Agreement on Straddling and Highly Migratory Fish Stocks;
- the 1995 Code of Conduct for Responsible Fisheries;
- the Convention on Biological Diversity;
- the Jakarta Mandate on Marine and Coastal Biological Diversity; and
- the 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem.²⁶

22 Bureau of Rural Sciences, *Glossary of Fisheries Terms*, <<http://www.daff.gov.au/brs/fisheries-marine/info/glossary>>, viewed on 17 October 2011.

23 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

24 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

25 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

26 Food and Agriculture Organisation of the United Nations, *The ecosystem approach to fisheries management*, <<http://www.fao.org/fishery/topic/13261/en>>, viewed on 17 October 2011.

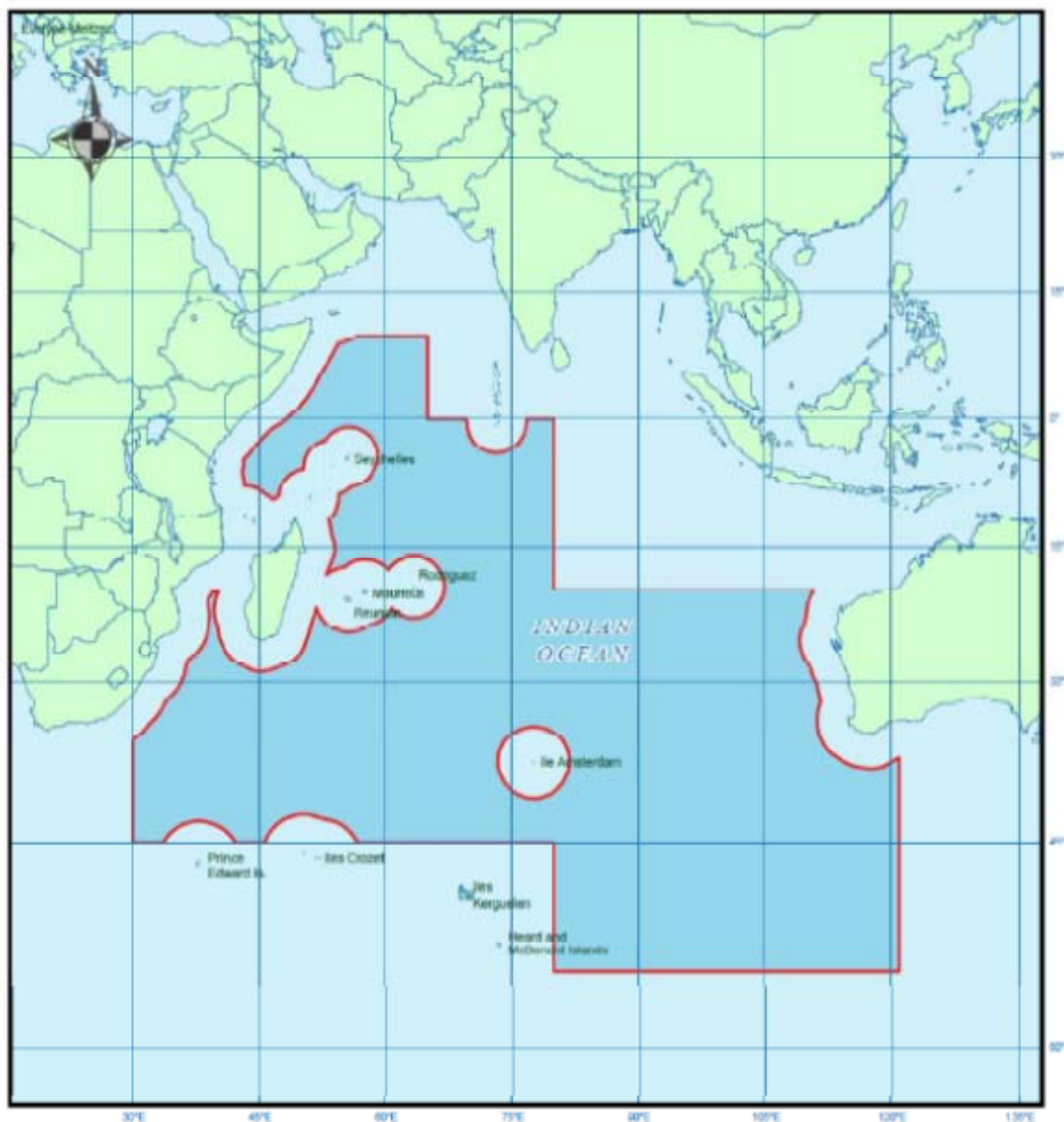
Area covered

- 5.22 The area covered by the Indian Ocean Agreement is bounded by the eastern border of the Exclusive Economic Zones of African states as far north as Somalia, just short of the Gulf of Aden. The boundary then extends across the Indian Ocean, passing through the equator, to the Australian Exclusive Economic Zone off South Headland in Western Australia.
- 5.23 The boundary then follows the Australian coast to a point half way between Albany and Esperance in Western Australia. From here the boundary extends directly south for 2,000km.
- 5.24 From this point, the boundary runs west and north, skirting the Australian Exclusive Economic Zone around Heard Island, the French Exclusive Economic Zone around Kerguelen and the Crozet Islands, and the South African Exclusive Economic Zone around Marion Island, until it meets the east coast of South Africa off Durban.²⁷

A map of the area covered by the Indian Ocean Agreement is at Figure 1.

²⁷ Indian Ocean Agreement, Article 3.

Figure 1 Area covered by the Indian Ocean Agreement



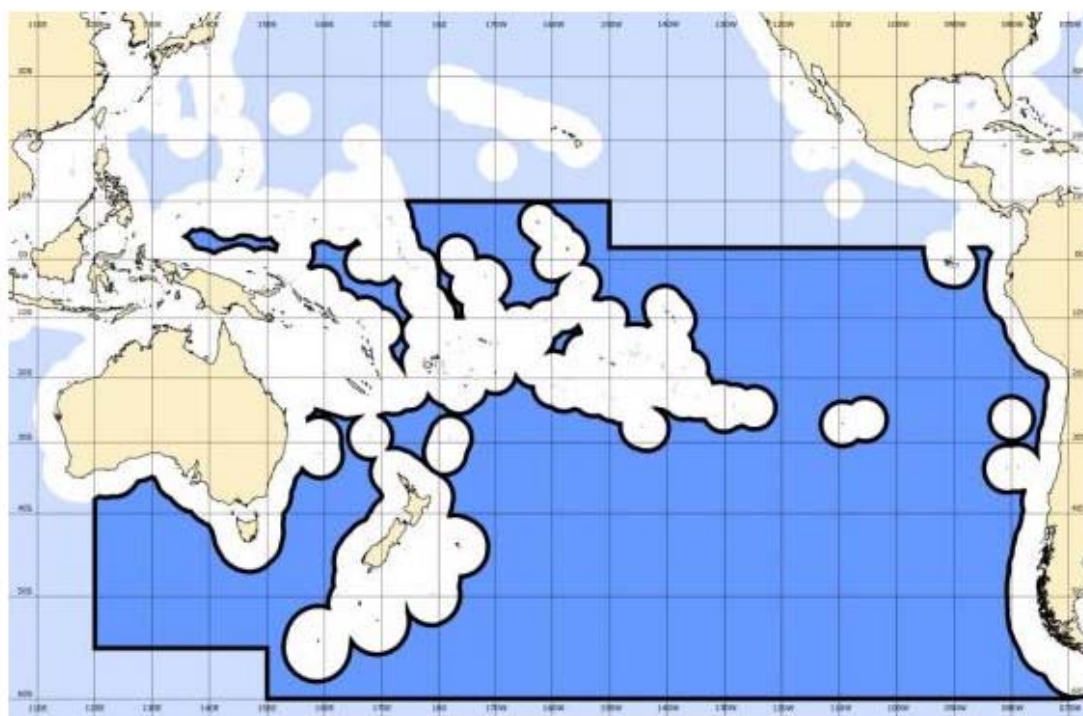
Source *Southern Indian Ocean Fisheries Agreement* (Rome, 29 December 2006) [2006] ATNIF 31, Additional information.

- 5.25 The Pacific Ocean Convention is bounded in the southwest by the Indian Ocean Agreement boundary. From there, the boundary follows the Australian Exclusive Economic Zone east and north, and then east and north of the Papua New Guinean Exclusive Economic Zone.
- 5.26 The boundary turns east across the Pacific to the Exclusive Economic Zone off South America near the border of Ecuador and Colombia. It continues south off the South American west coast until the boundary is several hundred kilometres south of Tierra Del Fuego. Finally, the boundary runs

west across the Pacific to meet the boundary of the Indian Ocean Agreement area south of Australia.²⁸

5.27 A map of the area covered by the Pacific Ocean Convention is at Figure 2.

Figure 2 Area covered by the Pacific Ocean Convention



Source *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean* (Auckland, 14 November 2009) [2010] ATNIF 5, Background Information.

Obligations

5.28 Meetings of the parties to the Indian Ocean Agreement and the Pacific Ocean Convention can make legally binding decisions on the following matters:

- measures to ensure the long term sustainability of the fisheries resources;
- measures to promote cooperation in research and management of fisheries resources;

28 Pacific Ocean Convention, Article 3.

- the adoption of generally recommended international minimum standards for fishing;
 - rules for monitoring and controlling fishing activities; and
 - measures to eliminate illegal fishing.²⁹
- 5.29 Parties to either Agreement will also be required to collect and exchange scientific information on the number of vessels authorised to fish in the treaty area and their fishing activities.³⁰ In addition, parties will be required to make a statement at each meeting on any sanctions imposed for violations of conservation and management measures.³¹
- 5.30 Australia will be obliged to take measures to ensure that Australian flagged vessels comply with the agreements and do not conduct unauthorised fishing in the treaty areas. Australian flagged vessels will also be required to carry satellite monitoring systems to check on compliance with treaty requirements.³²
- 5.31 Where an Australian flagged vessel is detected undertaking illegal fishing, it will be Australia's responsibility to take action in response, and report that action to the parties to the relevant treaty.³³
- 5.32 As a port state, Australia will be required to ensure that vessels flagged in other states that use Australian ports comply with the requirements of each treaty.³⁴
- 5.33 The National Interest Analyses note that, in many cases, the obligations imposed on Australia by the Indian Ocean Agreement and the Pacific Ocean Convention do not represent a significant increase in the obligations already imposed on Australian fishing vessels and fishing management authorities.³⁵

29 Indian Ocean Agreement, NIA, para. 13.
30 Pacific Ocean Convention, NIA, para. 15.
31 Indian Ocean Agreement, NIA, para. 14.
32 Pacific Ocean Convention, NIA, para. 17.
33 Indian Ocean Agreement, NIA, para. 17.
34 Indian Ocean Agreement, NIA, para. 19.
35 Pacific Ocean Convention, NIA, para. 21.

Benefits for Australia

- 5.34 As a party to both the Indian Ocean Agreement and the Pacific Ocean Convention, Australia will be able to participate in the management of fisheries resources in the areas and secure a share of the resources for the Australian fishing industry.³⁶
- 5.35 According to the NIAs, Australia was an active participant in the negotiations, and is expected to be amongst the first to ratify the treaties. Early ratification will enable Australia to participate in the first meetings of the parties, at which important rules and procedures will be adopted.³⁷
- 5.36 Parties to each treaty can meet to adopt allocations of total allowable catches for each party, and implement other conservation and management measures deemed necessary.³⁸
- 5.37 A number of the fish stocks covered by the Indian Ocean Agreement and the Pacific Ocean Convention occur within Australia's Exclusive Economic Zone. These treaties will enable Australia to seek management strategies for these fish stocks that are compatible with Australia's domestic fisheries interests.³⁹
- 5.38 The NIAs advise that, at the meetings, Australia will adopt the position that each treaty should be compatible with the already high standard adopted by the Australian domestic industry.⁴⁰
- 5.39 Representatives of the Department of Agriculture, Fisheries and Forestry did concede that the conservation measures adopted in relation to each treaty would only apply to those states signatory to the treaties. States that are not signatories to the treaties can continue unregulated fishing in these areas.
- 5.40 The enforcement measures available to the signatory states are largely limited to:
- their powers as port states, should unregulated vessels use ports in treaty states; and
 - the imposition of retail barriers to prevent the sale of fish covered by the treaties from an unregulated source.⁴¹

36 Indian Ocean Agreement, NIA, para. 5.

37 Indian Ocean Agreement, NIA, para. 5.

38 Indian Ocean Agreement, NIA, para. 4.

39 Indian Ocean Agreement, NIA, para. 5.

40 Pacific Ocean Convention, NIA, para. 6.

- 5.41 By the Department's own admission, such measures are not likely to have a significant effect on unregulated fishing. Nevertheless, it is the Department's view that the treaties will introduce some conservation measures and scientific research that would not otherwise exist, and that such measures are at least better than the current completely unregulated situation.⁴²
- 5.42 According to the NIAs, if Australia does not ratify either of the treaties, the operation of the UNFSA will oblige Australian fishing vessels to comply with the measures adopted by the signatories to the treaties or lose their right to fish either the southern Indian Ocean fishery or the South Pacific Ocean fishery.⁴³
- 5.43 Despite the low level of participation by Australian vessels in high seas fishing, there appears to be general support in the Australian fishing industry for the treaties. The Department of Agriculture, Fisheries and Forestry reported that public consultation for the Indian Ocean Agreement prompted the formation of a Southern Indian Ocean Deepwater Fishers' Association (SIODFA).⁴⁴
- 5.44 SIODFA has members in Australia, New Zealand, Mauritius, South Africa and Namibia, and has imposed a voluntary ban on benthic fishing in the Indian Ocean Agreement area pending the implementation of the Indian Ocean Agreement.⁴⁵
- 5.45 The Committee believes there are a number of reasons to ratify these treaties. Crucially, the treaties have the support of the fishing industry, and may result in the widespread adoption of Australian fisheries management standards. This alone is likely to make the Australian fishing industry more competitive.
- 5.46 In addition, while no-one expects that these treaties will comprehensively protect non highly migratory species in the high seas, the treaties will result in a considerable improvement in the quantity and quality of scientific data on these species. Good scientific data on fisheries has in the past resulted in the wider adoption of protective measures.

41 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 18.

42 Ms Anna Willock, Director, International Fisheries, Sustainable Resource Management, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 31 October 2011, p. 18

43 Indian Ocean Agreement, NIA, para. 10.

44 Indian Ocean Agreement, NIA, Attachment on Consultation, para. 46.

45 Southern Indian Ocean Deepwater Fishers' Association, Media Release July 2006, *Fishing Companies Announce World's First Voluntary Closures to High Seas Deep Water Trawling*, <<http://img.scoop.co.nz/media/pdfs/0607/SIODFAQA.pdf>> Viewed on 25 September 2011.

5.47 On these grounds, the Committee supports ratification of both treaties.

Recommendation 4

The Committee supports *Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006)* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports *Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (Auckland, 14 November 2009)* and recommends that binding treaty action be taken.

