

Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas

Background¹

- 7.1 Australia has played an active role internationally and regionally to enhance conservation and management processes related to the management of fisheries both in the Australian Fishing Zone (AFZ) and on the high seas.² The Australian Exclusive Economic Zone (EEZ) is approximately twice the size of the Australian continent and over-exploitation of fish stocks on the high seas affects directly the Australian Government's ability to protect the marine resources in this area and also to sustainably manage Australia's domestic fish stocks.

1 Unless otherwise specified the material in this and the following section was drawn from the National Interest Analyses and the Regulation Impact Statement for the *Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas*. The full text of the NIA can be found at the Committee's website on www.aph.gov.au/house/committee/jsct.

2 Australia is also party to a number of international and regional fishing agreements including the Convention on the Conservation of Southern Bluefin Tuna, the Indian Ocean Tuna Commission, the Convention for the Conservation of Antarctic Marine Living Resources and South Pacific Forum Fisheries Convention.

- 7.2 To this end Australia has become party to a number of international conventions including perhaps the most comprehensive covenant the United Nations Convention on the Law of the Sea (UNCLOS). This Convention sets up international regulation and cooperation necessary to manage and conserve the living resources of the high seas.
- 7.3 Australia became a party to UNCLOS in 1994 which meant that, as a coastal nation, Australia could claim an EEZ up to 200 nautical miles (nm) from the baseline of its territorial sea. Under UNCLOS Australia now has sovereign rights to explore and utilise the natural resources within the Australian EEZ, as well as an obligation to conserve and manage the marine resources within the EEZ.
- 7.4 For some time now there has been considerable international concern regarding illegal, unreported and unregulated (IUU) fishing both on the high seas and by foreign vessels within the Australian EEZ. Current regulation and cooperation efforts require improvement because information on fishing vessels and their activities is unreliable and their impact on fish stocks, particularly stocks of endangered species, is difficult to measure.
- 7.5 The operation of fishing vessels flying 'flags of convenience' granted by countries that allow fishing vessels to operate under their flag without controlling their fishing activities provides an ongoing and growing problem for Australian fisheries authorities, as well as for other coastal nations around the world.

Proposed treaty action

- 7.6 The proposed *Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas* (the compliance agreement) will allow Australia to apply internationally agreed standards for the responsible management by flag-states, of vessels that fish on the high seas. It will also provide a basis for greater cooperation between Australia and other States to improve high seas fishing practices.
- 7.7 The Government anticipates that the compliance agreement will have a deterrent effect on IUU activities that have a negative impact on Australia's harvest of fish stocks within and beyond the AFZ.
- 7.8 The costs of accepting the compliance agreement are minimal as the Australian high seas fishing industry is already required to meet most of

the obligations contained in the agreement. The costs should be seen in relation to the value to Australia of its fisheries that had an estimated value in the vicinity of \$204.4 million in 2000-2001.

Table 1. Estimated value of Australian fisheries that may benefit from improved regulation of high seas fishing under the Compliance Agreement, based upon catches in 2000-2001. Includes species Australia fishes for on the high seas and species fished for in the AFZ that are highly migratory or straddling stocks or are dependent upon high seas for recruitment.³

FISHERY	GROSS VALUE	CATCH (TONNES)
Southern Bluefin Tuna	\$56,515,000	5,263
East Coast Tuna and Billfish (yellowfin, bigeye, albacore, billfish, swordfish)	\$64,534,000	10,028
West Coast Tuna and Billfish (yellowfin, bigeye, billfish, swordfish)	\$29,061,000	2,859
Heard and Macdonald Islands (Patagonian toothfish, icefish)	\$30,000,000*	3,704
South Tasman Rise (orange roughy, other demersals e.g. oreo dory, spiky dory)	\$2,325,000	762
South East trawl (orange roughy, mirror dory, john dory, blue eye trevalla)	\$16,796,000	4,709
South East non-trawl (blue eye trevalla)	\$4,130,000	584
Great Australian Bight (orange roughy, boarfish)	\$1,099,000	335
TOTAL	\$204,460,000	28,244

7.9 The proposed compliance agreement requires flag-states to implement authorisation and recording systems for high seas fishing vessels.⁴ It is designed to reduce problems associated with the re-flagging of fishing vessels in order to avoid internationally agreed conservation and management measures on the high seas. The compliance agreement also

³ Source: Regulation Impact Statement, p. 9.

⁴ The agreement exempts vessels less than 24 metres to be from the agreement provided that such an exemption would not undermine the object and purpose of the Agreement and that effective preventative measures were taken against any exempt vessels undermining the Agreement.

aims to facilitate the dissemination of information on the activities of fishing vessels on the high seas.

7.10 The key objectives of the compliance agreement include:

- ensuring the long-term conservation and ecologically sustainable use of fish stocks on the high seas so as to protect Australian fishing interests on the high seas and within the AFZ;
- increasing control over vessels fishing on the high seas;
- increasing cooperation between states to effectively regulate fishing on the high seas;
- reducing the potential for conflict by encouraging all states to adhere to internationally agreed conservation and management measures;
- ensuring that the global standard of fisheries management is raised to that implemented domestically;
- ensuring ecologically sustainable management principles are applied to Australian vessels fishing on the high seas; and
- ensuring our obligations under UNCLOS are met in relation to cooperating to conserve and manage high seas fish stocks.

7.11 The Regulation Impact Statement cites the illegal take of Patagonian Toothfish in Australia's sub-Antarctic zone amounting to some 16,809 tonnes over the last 5 years, as an example where re-flagging has affected Australian fisheries. It goes on to point out that:

Evidence suggests that the illegal fleet in the sub-Antarctic is becoming better organised and more sophisticated. Boats dedicated to illegal fishing operate using mother ships and re-provisioning vessels, often with counter-surveillance capacity to limit detection. Their owners hide behind complex corporate structures and use flags of convenience.

7.12 In order to overcome this problem and generally improve the regulation of vessels operating on the high seas, the compliance agreement strengthens flag-state responsibilities to maintain an authorisation and recording system for their vessels that fish on the high seas. It also sets out to ensure that these vessels do not undermine the effectiveness of international conservation and management measures.

7.13 The compliance agreement will have a number of impacts on fisheries management in Australia including:

- measures to ensure that Australian-flagged vessels fishing on the high seas do not engage in any activity that undermines the effectiveness of international conservation and management measures;
- the responsibility to refuse authorisation to any vessel previously registered in the territory of another party that has undermined the effectiveness of international conservation and management measures;
- the authorisation of Australian-flagged vessels to fish on the high seas if they are properly marked for identification purposes and have provided to Australian authorities all information necessary to enable fulfilment of obligations under the agreement;
- enforcement of measures against Australian-flagged vessels that fish on the high seas that act in contravention of the agreement, and where appropriate, making such contraventions an offence under national legislation; and
- a requirement that Australia report to the flag-state and, as appropriate, to the United Nations Food and Agriculture Organisation (FAO), where there are reasonable grounds to believe a foreign-flagged vessel has engaged in activities that undermine the effectiveness of international conservation and management measures.

7.14 Many of the obligations under the agreement can be implemented administratively by Australian Fisheries Management Authority (AFMA) or under the *Fisheries Management Act*. However, new legislation may be required to implement some of the obligations under the compliance agreement.

Evidence presented and issues raised

7.15 The Committee noted that the compliance agreement is part of a framework of multilateral, regional and bilateral agreements on fisheries management including UNCLOS and the United Nations Fish Stocks Agreement. In combination these agreements will bring pressure to bear on irresponsible fishers on the high seas and help to mitigate the damaging effects of illegal fishing activities on fish stocks of coastal states like Australia.

7.16 While AFMA stated that this is an indirect measure the Committee agreed that it is better to have such an agreement in place than no agreement in place at all. Provision of internationally agreed steps that will make it

more difficult for companies registering their vessels under flags of convenience and being able to undertake illegal fishing activities will therefore be made more difficult.

7.17 The need for the compliance agreement was highlighted by evidence indicating that a total of six foreign fishing vessels have been apprehended in relation to illegal fishing in Australian waters around Heard and McDonald Islands.⁵ The Committee was informed that these ships were sailing under various flags of convenience namely: Panama, Togo, Sotome (Japan), Togo and Vanuatu with officers from Spain and Russia and crews from China and Indonesia. The value of the catch from the two most recently apprehended vessels, the *Lena* and *Volga*, was approximately \$2 million.

7.18 The Committee was concerned to learn that there appeared to be coordinated criminal activity:

to flag boats in various ports, set up dummy companies to operate these vessels and fish in the Australian zone, in the French zone and in other waters where they believe they can make a harvest.

AFMA went on to state that:

They do this in flagrant disregard of international cooperative arrangements, such as exist to protect sub-Antarctic waters, and also in disregard of coastal state laws. This is an ongoing problem for Australia. It is not just a fisheries resource abuse issue; it is a disregard of Australian sovereign fishing rights for those parties who are licensed to fish in those areas.⁶

7.19 The compliance agreement will set up:

a sort of world order of good behaviour and practice, under which diplomatic pressure and persuasion may be brought to bear to encourage more countries to join and, hence, then limit the opportunities for this activity to occur.⁷

7.20 The Western Australian Government raised its concern about the flag status of charter and joint-venture vessels and its contention that the status

5 Geoff Rohan, *Transcript of Evidence*, 12 July 2002, p. 82.

6 Geoff Rohan, *Transcript of Evidence*, 12 July 2002, p. 83.

7 Geoff Rohan, *Transcript of Evidence*, 12 July 2002, p. 81.

of a fishing vessel should be determined by the party State before entering into such arrangements with any 'foreign-flagged' vessels.⁸

- 7.21 In response AFMA noted that the WA submission points out a valid area of consideration for a flagging or licensing state; where these may be the same or different states. It suggests that:

The FAO Compliance agreement contains principles which have application to this issue but does not necessarily spell out the action to be taken. Such matters are probably dealt with in more detail in the UN Fish Stocks Agreement which Australia has ratified and put into effect in domestic legislation in December 2001.

- 7.22 The AFMA response goes on to suggest that the agreement does not spell out how to deal with respective responsibilities for flag and licensing states, where these are different entities, however:

The principles embodied in the proposed Agreement are consistent with those contained in other Agreements and international guidelines such that we have adequate basis to consider such matters ... there is [also] provision for regional fisheries management authorities to write conservation measures into their management provisions such that the responsibilities relating to charter/joint venture vessels can be dealt with specifically.

- 7.23 Finally, Australia must licence the use of these joint venture boats in Australian waters and can withdraw that licence under Australian law if unauthorised fishing activities are being undertaken, as well as invoking the provisions of the compliance agreement (once it enters into force) in relation to the responsibility of the flag state relating to the unacceptable fishing activities.⁹

Conclusions and recommendation

- 7.24 Since its inception the Committee has scrutinised a number of international fisheries agreements to which Australia has become a party or has been a leader in setting down best practice management procedures

8 Western Australian Government, *Submission No. 8*, p. 2.

9 Australian Fisheries Management Authority, *Submission No. 12*, p. 1.

for Australian and international fisheries. Through acceptance of this compliance agreement the Committee considers that Australia will continue its leading role in the management and effective regulation of its own fisheries while enhancing the high seas management of fisheries on an international level.

- 7.25 While the Committee was not able to ascertain those countries in this region that are likely to accede to the agreement, because Australia is an emerging participant in high seas fisheries and the Australian fishing fleet already meets the reporting requirements, the Committee nonetheless, considers that participation in such an agreement is a reasonable next step in Australia's role in international fisheries management.
- 7.26 The Committee agrees with the proposition that the compliance agreement will act as an additional deterrent to IUU fishing by improving regulation of fishing vessels on the high seas, thus increasing international cooperation and exchange of information, and reducing the ability to re-flag vessels with flags of convenience.
- 7.27 The Committee is satisfied that the concerns raised by the Western Australian Government need ongoing consideration by AFMA and the Department of Agriculture, Fisheries and Forestry (AFFA) - Australia in relation to the licensing of joint-venture boats - but considered it is not an issue that should hinder action on the implementation of this agreement.
- 7.28 The Committee also concurs with AFFA's suggestion that the compliance agreement will have a beneficial influence on high seas fish stocks and highly migratory or straddling stocks fished for in the AFZ by improving compliance with international conservation and management measures on the high seas.¹⁰

Recommendation 6

- 7.29 **The Committee supports the *Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas* and recommends that binding treaty action be taken.**

10 Paul Ross, *Transcript of Evidence*, 12 July 2002, p. 81.