

# Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

## Introduction

- 4.1 The proposed treaty action is to bring into force the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (the Agreement).<sup>1</sup> The Agreement will supplement Australia's program to deter illegal, unreported and unregulated (IUU) fishing.<sup>2</sup> The Agreement applies effective port State measures to prevent, deter and eliminate IUU fishing.<sup>3</sup>
- 4.2 The Agreement was approved by the Food and Agriculture Organization of the United Nations (FAO) on 22 November 2009. Australia signed the Agreement on 27 April 2010. As at 14 May 2013, the Agreement had received 23 signatures, one acceptance and two accessions.<sup>4</sup> The Department of Agriculture indicated that it expected Australia to be the 11<sup>th</sup> country to ratify the Agreement.<sup>5</sup>

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1 National Interest Analysis [2013] ATNIA 13 with attachment on consultation *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome, 22 November 2009* [2010] ATNIF 41 (hereafter referred to as 'NIA'), para 1.

2 Mr Gordon Neil, Assistant Secretary, Fisheries Branch, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1.

3 *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome, 22 November 2009* [2010] ATNIF 41, Article 2. Also see: Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 6.

4 NIA, para 2.

5 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1.

## Background

- 4.3 Australia has a strong interest in measures intended to deter IUU fishing. IUU fishing threatens the Australian harvest of fish stocks within and beyond its exclusive economic zone, such as in the southern Indian and Antarctic Oceans. Deterrence of IUU fishing contributes to the protection of the Australian fishing industry and communities dependent upon this industry for economic well-being.<sup>6</sup>
- 4.4 In 2011–12 Australia’s commercial fisheries production was worth AU\$2.3 billion and the industry employed 10 633 people, over 8 000 of them in full-time positions.<sup>7</sup> It is Australia’s fifth largest food producing industry. The Australian Fishing Zone (AFZ) is the third largest in the world and covers approximately nine million square kilometres. The Australian Fisheries Management Authority (AFMA) manages over 20 Commonwealth fisheries.<sup>8</sup>
- 4.5 While IUU fishing continues to be a significant problem, especially in the ports of developing States, within Australian waters incursions by foreign fishing vessels have fallen dramatically.<sup>9</sup> This is the result of Australia’s deterrence and prevention measures. In 2005–06, 367 suspected illegal foreign fishing vessels were apprehended in Australian waters and only seven were apprehended in 2012–13. So far in 2013–14 twenty suspected fishing vessels have been apprehended. There have been no illegal fishing vessels sighted in Australia’s Southern Ocean waters since June 2005.<sup>10</sup>
- 4.6 The Committee was told that estimating the extent and impact of illegal fishing is difficult as data is not publicly reported, however, an estimate in 2008 put the cost of IUU fishing at around US\$23 billion per year, equivalent to around 26 million tonnes of marine fish.<sup>11</sup> The Agreement sets out protocols for identifying where IUU activities have occurred by verifying catches against prior notification (which states the size and species of a catch).<sup>12</sup>

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6 NIA, para 6.

7 M Skirtun, P Schlvist and S Vieira, *Australian fisheries statistics 2012*, FRDC project 2010/208, Australian Bureau of Agriculture and Resource Economics and Sciences, Canberra, November 2013, pp. 1 and 37.

8 Australian Fisheries Management Authority (AFMA), ‘About our fisheries’, <<http://www.afma.gov.au/about-us/about-our-fisheries/>>, accessed 13 February 2014.

9 Department of Agriculture, *Submission 3*, p. 1.

10 Department of Agriculture, *Submission 3*, p. 1.

11 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 2; Department of Agriculture, *Submission 3*, p. 1.

12 Mr Fraser McEachan, Foreign Compliance Policy, Operations Division, Australian Fisheries Management Authority (AFMA), *Committee Hansard*, Canberra, 17 March 2014, p. 4.

## Overview and national interest summary

- 4.7 The Agreement is the first global, legally-binding instrument directed at combating illegal, unreported and unregulated fishing through the establishment of robust port measures.<sup>13</sup> At present all vessels fishing in Australian waters require a licence, this Agreement does not alter this requirement as it only applies to 'port permit activity'.<sup>14</sup> Recreational vessels in breach of State or Northern Territory (NT) fishing legislation would not be refused port access to Australian ports.<sup>15</sup> Rather, such vessels are subject to specific fisheries compliance procedures and penalties administered by the States and NT.
- 4.8 On 27 April 2010 Australia signed the Agreement.<sup>16</sup> The next step for Australia is to ratify the Agreement, which would make it the 11<sup>th</sup> country to do so. The Department of Agriculture told the Committee that in the region New Zealand, Samoa, France and Chili have ratified the Agreement and Indonesia has signed but not yet ratified the Agreement.<sup>17</sup> The NIA asserts that it is important that Australia ratify this Agreement as soon as practicable. Australia was active in the negotiation of the Agreement. Ratification of the Agreement will:
- enable Australia to apply internationally agreed standards for port State measures;
  - enhance Australia's international reputation as a responsible fishing nation; and
  - provide a basis for greater cooperation between Australia and other States to reduce IUU fishing activities.<sup>18</sup>
- 4.9 The Agreement requires port States to take action against operators known to be, or suspected of, IUU fishing or activities in support of such fishing. Port State measures include: denying entry to port; denying the use of port for landing, transshipping, packaging and processing of fish; and undertaking port inspections. These measures assist port States in preventing illegal catches from reaching markets. To strengthen these port State measures, the Agreement introduces corresponding requirements on flag States. These include ensuring flag State vessels cooperate with port

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13 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1

14 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, p. 6.

15 Department of Agriculture, *Submission 3*, p. 1.

16 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1.

17 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 4.

18 NIA, para 4.

inspections undertaken pursuant to the Agreement, and that flag States take appropriate follow-up action if their vessels are found to be engaging in IUU fishing.<sup>19</sup>

## Reasons for Australia to take the proposed treaty action

4.10 IUU fishing is recognised globally as a threat to the management and conservation of living marine resources and marine ecosystems and, in particular, to sustainable fisheries. This Agreement is the first global legally-binding instrument specifically directed at combating the problem.<sup>20</sup> As more countries ratify the process, pressure will mount on both noncompliant fishing vessels and States to comply with the Agreement if they want access to international markets.<sup>21</sup>

4.11 Australia's fishing vessels are highly regulated and monitored by the Australian Government.<sup>22</sup> To date no Australian fishing vessel has been listed as engaging knowingly in IUU fishing activities. According to the Department of Industry:

If an Australian fishing vessel was to be reported as IUU fishing, AFMA would investigate the matter. Australia has the necessary laws in place to meet its international obligations and apply effective sanctions. The *Fisheries Management Act 1991* (the FMA) contains a range of enforcement measures, which could be applied to a vessel reported as IUU. These include warnings, restrictions on the conditions which apply to the fishing licence, a direction to cease fishing, suspension or cancellation of the fishing licence, and prosecution leading to fines and possible forfeiture of catch and vessel.<sup>23</sup>

4.12 Australia's record and regulatory framework makes it a key driver in promoting collaborative action to improve fisheries governance and combating IUU fishing in the South East Asian region.<sup>24</sup> According to the Department of Agriculture:

In South-east Asia, Australia is part of the regional plan of action to promote responsible fishing practices, including combating IUU fishing in South-east Asia, known as the RPOA. This non-binding

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19 NIA, para 3.

20 NIA, para 5.

21 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 3.

22 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 4.

23 Department of Agriculture, *Submission 3*, p. 2.

24 NIA, para 7.

regional plan of action is yielding some success in hampering port access to illegal fishing vessels operating in our southern ocean. However, encouraging our neighbours to adhere to a binding agreement, establishing harmonised port measures, will significantly improve the fight to deter IUU fishing in the region.<sup>25</sup>

4.13 The Agreement will apply to a wide range of fishing activities and activities in support of such fishing, including:

- fishing in waters within the jurisdiction of a coastal State without the coastal State's consent;
- fishing in contravention of a conservation and management measure adopted by a regional fisheries management organisation (RFMO) to which the flag State of the vessel is a party;
- fishing in violation of national laws or international obligations;
- failing to report (or misreporting) fishing activities, in contravention of national laws and regulations or reporting procedures established by RFMOs;
- fishing in an area governed by an RFMO by a vessel without nationality, or flagged to a State that is not a Party to that organisation;
- fishing in an area governed by an RFMO in a manner that is inconsistent with or contravenes conservation and management measures adopted by that organisation;
- (where there is no established RFMO) fishing in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;
- landing, packaging, processing, transshipping or transporting of fish taken through one of the fishing activities described above; and
- providing personnel, fuel, gear or other supplies in support of one of the fishing activities described above.<sup>26</sup>

4.14 According to the Department of Agriculture, the Agreement:

... highlights the role that a port state can play in deterring illegal fishing. Denial of access to ports, and hence access to markets, targets a vessel's profitability and can operate as a significant disincentive to illegal fishing vessels. The agreement also encourages coordination and cooperation with other states,

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25 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1.

26 NIA, para 5.

regional fisheries management organisations and other relevant international organisations to promote coordinated action.<sup>27</sup>

- 4.15 The obligations under the Agreement are consistent with Australia's obligations under the United Nations Convention on the Law of the Sea ([1994] ATS 31) and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ([2004] ATS 26) to cooperate to conserve living marine resources. The Agreement will assist in strengthening international efforts to reduce problems associated with the practice of IUU fishing.<sup>28</sup>
- 4.16 The Department of Agriculture stressed that the Agreement was strongly supported by Australia's fishing industry:

The industry is very, very supportive of any measures we take against IUU fishing. We have our efforts in southern waters and in the southern Indian Ocean, areas where the industry is very sensitive to the need to combat IUU fishing. In general, our fleets everywhere share the concern and are very supportive of our participation in regional fisheries management organisations, and they all see the need to jointly manage our fisheries and to do it cooperatively with the other nations. So, there is strong industry support for us signing the port state measures or acceding.<sup>29</sup>

## Obligations

- 4.17 The Committee was told by the Department of Agriculture that the Agreement contains four mechanisms to prevent, deter and eliminate IUU fishing:
- preventing entry to port of vessels suspected of IUU fishing;
  - denying the use of the port by vessels suspected of IUU fishing;
  - imposing requirements to inspect foreign fishing vessels; and
  - requiring relevant states, such as flag states, to take action if IUU fishing is reported to them.<sup>30</sup>
- 4.18 The Agreement would apply to most foreign-flagged vessels seeking entry to and use of Australian ports (**Article 3(1)**). It establishes a system of *minimum* standards for port State measures for the purposes of monitoring

27 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, pp. 1–2.

28 NIA, para 8.

29 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, p. 1.

30 Mr Neil, Department of Agriculture, *Committee Hansard*, Canberra, 17 March 2014, pp. 1–2. Also see, NIA, para 3 and 10.

and controlling the activity of foreign fishing vessels and determining whether there is any involvement with IUU fishing. Parties can apply *additional* port State measures provided that they are consistent with international law (**Article 4(1)(b)**). Further, the Agreement contains provisions intended to assist developing countries in meeting their obligations under the Agreement (**Article 21**).<sup>31</sup>

## Entry to, and use of, ports

- 4.19 The Committee was told that in the last three years 13 permits were issued to foreign fishing vessels to access Australian ports and no suspected IUU fishing vessels were identified.<sup>32</sup>
- 4.20 Under the Agreement Australia would be obliged to designate and publicise the ports to which vessels may request entry (**Article 7(1)**). ‘Vessels’ are defined broadly to include both fishing vessels and support vessels, such as supply and freezer vessels (**Article 1(j)**). Vessels wishing to access these ports would be required to request permission for port access ahead of time, and transmit information on their activities and the fish they have on board (**Article 8** and **Annex A**). This will give Australian authorities an opportunity to identify in advance vessels of potential concern, and to determine whether to allow or deny the vessel entry into its port (**Article 9(1)**).<sup>33</sup>
- 4.21 Australia will be required to deny the vessel *entry* into its port if it has ‘sufficient proof’ that the vessel has engaged in IUU fishing, for example, where the vessel is on an IUU list of an RFMO (**Article 9(4)**). However, Australia could allow the entry of such a vessel where it intends to inspect the vessel and take action which is as effective as denying entry (such as seizing the catch), provided this is consistent with international law and Australia does not allow the use of its port (**Article 9(5)(6)**).<sup>34</sup>
- 4.22 Australia would be required to deny the *use* of its designated ports for landing, transshipping and processing of fish, and for port services such as refuelling, resupplying and repair, to foreign vessels which may have engaged in, or supported, IUU fishing (**Article 11**).<sup>35</sup>
- 4.23 Vessels that require entry to port due to force majeure or distress will not be subject to the above requirements (**Article 10**). In addition, Australia

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31 NIA, para 11.

32 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, p. 3.

33 NIA, para 12.

34 NIA, para 13.

35 NIA, para 14.

could not deny the use of its port to a vessel where such use would be essential to the safety or health of the crew or the safety of the vessel, or (where appropriate) for the scrapping of the vessel (**Article 11 (2)**).<sup>36</sup>

## Port inspections

4.24 Australia will be required to ensure that there is sufficient capacity to conduct inspections at its designated ports, and that these ports and its inspectors are adequately equipped and trained (**Article 7(2)** and **Article 13**).<sup>37</sup> AFMA confirmed that fisheries officers would be tasked with assessing the compliance of vessels.<sup>38</sup> In the event a vessel should attempt to evade Australian authorities, Border Protection Command (BPC) could be called upon to detain it for investigation.<sup>39</sup> Alternatively, should the vessel not be intercepted it would be open to AFMA to alert other port States so they may inspect or deny port entry.<sup>40</sup> The Department of Agriculture clarified the assets at its disposal to ensure compliance:

AFMA is a client of the Civil Maritime Surveillance program coordinated by BPC. BPC uses a range of air and sea surveillance assets to service the requirements of client agencies to protect Australia's interests against the eight identified maritime threats, one being illegal foreign fishing. The assets available to the program include Customs and Border Protection and Royal Australian Navy patrol vessels, Royal Australian Air Force and contracted aircraft, and other assets, such as commercial satellite imagery. These are deployed on a multi-tasking basis to high risk areas.<sup>41</sup>

4.25 The Agreement will commit Australia to conducting regular inspections of vessels accessing its designated ports, and outlines a set of standards that will be used during those inspections. These include conducting reviews of ship papers, surveying fishing gear, examining catches and checking a ship's records to reveal if it has engaged in IUU fishing (**Article 12, Article 13** and **Annex B**). The Agreement also sets out risk-based criteria for determining which vessels to inspect. Parties are also required to seek to agree on the minimum levels for inspection of vessels through, as appropriate, RFMOs, the FAO or otherwise.<sup>42</sup>

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36 NIA, para 15.

37 NIA, para 16.

38 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, p. 7.

39 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, p. 7.

40 Department of Agriculture, *Submission 3*, p. 1.

41 Department of Agriculture, *Submission 3*, pp. 1-2.

42 NIA, para 17.



4.26 Where, following a port inspection, Australia has clear grounds for believing that a vessel has engaged in IUU fishing, it will be required to deny the vessel the use of its port for landing, transshipping, packaging and processing of fish. Australia will also be required to notify the flag State and, as appropriate, RFMOs and relevant coastal States (**Article 11**).<sup>43</sup>

## Flag state obligations

4.27 As a flag State, Australia will be obliged to take a range of measures to ensure that Australia-flagged fishing vessels comply with the Agreement (**Article 20**). These include:

- requiring Australian-flagged vessels to cooperate with port State inspections carried out under the Agreement;
- encouraging Australian-flagged vessels to land, tranship, package and process fish, and use other port services, in ports of States that apply the Agreement;
- requesting the port State to which an Australian-flagged vessel is seeking access to deny the use of its port, where Australia has clear grounds to believe that the vessel has engaged in IUU fishing; and
- undertaking appropriate follow-up action in response to any inspection reports indicating that a vessel flying its flag has engaged in IUU fishing.<sup>44</sup>

## Information-sharing mechanisms

4.28 The Agreement requires Australia to collaborate in the creation of an information-sharing mechanism to enable countries to share details on vessels which are associated with IUU fishing (**Article 16**). Australia will also be under a general obligation to take measures to exchange information among relevant national agencies, and to exchange information with relevant States, the FAO and other international organisations and RFMOs, in order to promote the effective implementation of the Agreement (**Article 5(c)** and **Article 6** respectively).<sup>45</sup>

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43 NIA, para 18.

44 NIA, para 19.

45 NIA, para 20.

## Implementation

- 4.29 The obligations under the Agreement can be implemented under existing Commonwealth legislation or administratively through the application of Standard Operating Procedures and other arrangements. In particular, certain obligations are implemented under the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991*. No amendments are required to these Acts or other Commonwealth legislation to implement the obligations under the Agreement.<sup>46</sup>
- 4.30 According to the NIA, Standard Operating Procedures and associated guidelines will require some revision and some new administrative arrangements would need to be put in place to meet the requirements of the Agreement.<sup>47</sup>

## Costs

- 4.31 The entry into force of the Agreement will not impose a significant burden or cost on the Australian Government. Many obligations imposed by the Agreement have already been implemented and are met through the current activities of AFMA and the Department of Agriculture.<sup>48</sup>
- 4.32 The Australian Government will need to:
- maintain a workforce of officers with the appropriate port inspection skills, who can be mobilised as required;
  - provide training;
  - maintain a current port list;
  - maintain Standard Operating Procedures; and
  - work with other countries in sharing information.<sup>49</sup>
- 4.33 The work load generated from this initiative is not expected to be high. As previously mentioned foreign fishing vessel visits to Australian ports are uncommon and no suspected IUU fishing vessels have been identified at Australian ports in the last three years.<sup>50</sup> Port inspections will not require a workforce dedicated to this task and will be undertaken by officers as part of a wider set of duties. Consequently the ongoing financial commitment is expected to be absorbed under the existing budget of AFMA.<sup>51</sup>

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46 NIA, para 22.

47 NIA, para 23.

48 NIA, para 24.

49 NIA, para 25.

50 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, p. 3.

51 NIA, para 25.

4.34 In line with AFMA's cost recovery impact statement, costs associated with Australian fishing vessels are partially attributed to industry and partially to government. However, Australian fishing vessels are already required to comply with similar monitoring, control and surveillance standards for fishing operations in Australia's waters and no significant new costs are anticipated. The Agreement will apply similar obligations to foreign fishing vessels.<sup>52</sup> Foreign vessels will be required to pay \$860 for a permit to come into port.<sup>53</sup>

## Conclusion

4.35 This Agreement is a mechanism by which the Australian Government can implement its mandate to prevent IUU fishing. Due to the relatively small number of fishing vessels that seek access to Australian ports, the Committee concedes that the Agreement has limited direct application in the context of Australian waters.

4.36 The value of this Treaty lies in its international application. As this Agreement builds momentum, IUU fishing vessels will be increasingly excluded from utilising port facilities and their products will not have ready access to world markets. The enactment of the Agreement will send a clear message to the international fishing industry, that compliance is a necessary part of doing business.

4.37 The Committee supports Australia's ratification of the Agreement and recommends that binding treaty action be taken.

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### Recommendation 3

**The Committee supports the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* and recommends that binding treaty action be taken.**

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52 NIA, para 26.

53 Mr McEachan, AFMA, *Committee Hansard*, Canberra, 17 March 2014, pp. 2, 5.

