

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

**with attachments on consultation**

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

**(Auckland, 14 November 2009)**

**[2010] ATNIF 51**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Obligations**

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

### *Conservation and management measures*

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

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

#### *Obligations to provide information*

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

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

#### *Flag State duties*

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

#### *Port State duties*

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

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

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

### **Implementation**

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

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

### **Costs**

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

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

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

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

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

### **Regulation Impact Statement**

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

### **Future treaty action**

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

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

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

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

### **Withdrawal or denunciation**

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

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

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

### **Contact details**

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



## ATTACHMENT ON CONSULTATION

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

#### CONSULTATION

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

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

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

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

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

## **State and Territory departments**

35. The following State and Territory Departments were consulted:

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

*New South Wales – NSW Fisheries*

*Victoria – Fisheries Victoria – Department of Primary Industries*

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

*Northern Territory – NT Fisheries*

*Western Australia – Department of Fisheries*

*Natural Resources Management Marine and Coastal Committee*

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

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

*Standing Committee on Treaties*

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

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

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

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

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

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

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

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

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

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

### **General Public**

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

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