

SUBMISSION NO. 11

From: ROHAN Geoff [mailto:Geoff.Rohan@afma.gov.au]

Subject: FW: Re FAA Agreement question

Paul

Have you been able to look at this? If not, I will convey my summary impressions.

As per my initial comment in an earlier e-mail to you, I see the issue raised by the WA dept as being largely external to the proposed Agreement.

Fistly, the Agreement relates to vessels authorised to fish on the high seas. The WA dept letter does not appear to appreciate this and there may be some concern about joint venture fishing in-zone. Secondly, the Agreement emphasises flag state responsibility. Such responsibility continues to apply whether the flag state is the state issuing the authority to fish or whether the boat is flagged elsewhere and is operating under a fishing authority issued it as a charter boat or joint venture partner.

In the latter case, there would be split responsibility for the vessel. The flag state would have a responsibility for the behaviour of the vessel whilst the State which issued the authority to fish would have a responsibility to ensure the vessel did not breach the licencing conditions. The licencing state may not be able to exercise enforcement powers in relation to the activities of the vessel on the high seas (as distinct to activities in its coastal waters, where it could apply domestic law). However, the licencing State could exercise its prerogative to cancel the fishing authority and to not renew it for that vessel or crew or controlling company at a later occasion.

As such, the WA request points out a valid area of consideration for a

flagging or licensing state; where these may be the same or different states. 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. The matter is also dealt with in terms of principles at least in the IPOA on combatting IUU fishing.

In summary, whilst the FAO Compliance Agreement does not spell out how to deal with respective responsibilities for flag and licensing states, where these are different entities, Australian authorities are well aware of the issues. 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.

I would add also, that there is 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.

The issue raised by WA is valid and one that needs to be addressed in the relevant circumstances. It is not to be viewed as a criticism of the proposed Agreement. It should not prevent it going ahead.

I hope the above makes some sense. I have copied Robert Morris into this message with a view to conveying an initial comment, in view of the time frame.
Geoff