

**AGREEMENT TO PROMOTE COMPLIANCE WITH
INTERNATIONAL CONSERVATION AND MANAGEMENT
MEASURES BY FISHING VESSELS ON THE HIGH SEAS,
DONE AT ROME ON 24 NOVEMBER 1993.**

Documents tabled on 25 June 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**
- **Regulation Impact Statement**

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November 1993.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia accept the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Agreement).

Date of proposed binding treaty action

2. Binding treaty action is proposed to take place as soon as practicable after legislative changes implementing the Agreement have received Royal Assent. This should occur in late 2002 or early 2003.

3. The text of the Agreement was adopted, subject to acceptance, at the Twenty-seventh Session of the Conference of the United Nations Food and Agriculture Organisation (FAO) in November 1993.

4. To date, 22 States have accepted the Agreement, which will enter into force generally from the date of receipt of the twenty-fifth instrument of acceptance.

Date of tabling of the proposed treaty action

5. 25 June 2002

Summary: purpose of proposed treaty action and why it is in the national interest

6. Acceptance of the Agreement will enhance Australia's international reputation as a responsible fishing nation. In particular, it will enable Australia to apply internationally agreed standards for the responsible management by flag-states of vessels that fish on the high seas and provide a basis for greater cooperation between Australia and other States to improve high seas fishing practices. Australia's fishing industries and communities are expected to benefit from acceptance of the Agreement through its deterrent effect on illegal, unreported and unregulated (IUU) fishing activities that have a negative impact on Australia's harvest of fish stocks within and beyond the Australian Fishing Zone (AFZ).

7. The Agreement is consistent with the United Nations Convention on the Law of the Sea (UNCLOS), to which Australia is a Party, and forms a central element of the FAO Code of Conduct for Responsible Fisheries, which sets out principles and standards of behaviour for responsible fishing. The Agreement aims to improve the regulation of vessels that fish on the high seas. In order to ensure that vessels fish in a responsible manner on the high seas, it requires flag states to implement authorisation and recording system for high seas fishing vessels. The Agreement will assist in cooperative international efforts to reduce problems associated with the practice of re-flagging fishing vessels for the purpose of evading internationally agreed conservation and management measures for high seas fisheries.

Reasons for Australia to take the proposed treaty action

8. Many States, including Australia, participate in global, regional and subregional fisheries management organisations that have been established under UNCLOS to provide for the responsible management of fish stocks on the high seas. These organisations devise catch limits and other conservation and management measures for fish stocks harvested on the high seas with a view towards ensuring their long-term survival. However, these management measures are binding only upon States that are members of the relevant organisations, and thus, fishing vessels that operate under the flag of those member States.

9. To evade compliance with international conservation and management measures, some owners of fishing vessels engage in the practice of ‘re-flagging’ whereby they register their vessels with States that do not participate in or cooperate with regional fisheries management organisations. These States are known as ‘flag-of-convenience’ States. Re-flagging vessels to flag of convenience states is a serious problem, well known to fishery managers, that compromises the effectiveness of fisheries organisations and undermines the rights and interests of responsible fishing nations like Australia. Re-flagging is commonly associated with IUU fishing.

10. The FAO Code of Conduct for Responsible Fisheries, which sets out principles and standards of behaviour for responsible fishing, was adopted unanimously by the FAO Conference on 31 October 1995. The Agreement is an integral and binding element of the Code of Conduct. A key objective of the Agreement is to deter re-flagging and IUU fishing. In order to overcome this problem and generally improve the regulation of vessels operating on the high seas, the Agreement strengthens flag-state responsibilities to maintain an authorisation and recording system for their vessels that fish on the high seas and ensure that these vessels do not undermine the effectiveness of international conservation and management measures. The Agreement provides the basis for improved international cooperation with regard to IUU fishing, particularly through the collection and dissemination of information on the activities of fishing vessels on the high seas.

11. Australia has a strong interest in measures intended to deter re-flagging and IUU fishing. IUU fishing continues to represent a serious threat to the worlds’ marine ecosystems and threatens the Australian harvest of fish stocks within and beyond the AFZ. Australia has an outstanding international reputation as a responsible fishing nation however, the AFZ, especially the Southern Oceans, continues to be plundered by foreign IUU vessels. Acceptance of the Agreement will help to deter IUU and other unsustainable fishing activities, thus contributing to the protection of the Australian fishing industry and communities dependent upon this industry for their economic well-being.

12. There are currently 42 Australian fishing vessels licensed to operate on the high seas, including a number of established operators in the Southern Ocean and Indian Ocean. Australian participation in high seas fisheries is expected to gradually expand. Expansion of some domestic fisheries to include high seas areas under the competence of regional fisheries management organisations will increase the number of vessels licensed to fish on the high seas, but is unlikely to affect the actual number of vessels operating on the high seas. The estimated gross value of Australian fisheries that may benefit from improved regulation of high seas fishing is \$204.5 million (see Attachment A for details).

13. Acceptance of the Agreement would further enhance Australia's international leadership on fisheries issues by building on our implementation of the UNFSA¹ and leadership in developing the International Plan of Action to Prevent, Deter and Eliminate IUU fishing, a voluntary instrument adopted in 2001 under the FAO Code of Conduct for Responsible Fisheries. Entry into force of the Agreement would contribute to the conservation of living marine resources within and beyond the AFZ.

Obligations

Flag-state responsibilities

14. The Agreement would require Australia to take all necessary measures to ensure that Australian-flagged vessels that fish on the high seas do not engage in any activity that undermines the effectiveness of international conservation and management measures (Article III (1a)).

15. The Agreement would require Australia to ensure that Australian-flagged vessels do not fish on the high seas unless authorised to do so, and that authorised vessels fish in accordance with the conditions of their permit (Article III (2)). Australia would not be able to authorise a vessel to fish on the high seas unless satisfied that our responsibilities in respect of that vessel under the Agreement could be effectively satisfied (Article III (3)). The Agreement would require Australia to cancel a vessel's high seas permit if the vessel ceases to be flagged to Australia (Article III (4)).

16. Under the Agreement, Australia would have 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. An exception would be allowed where any suspension of an authorisation imposed by another Party for that vessel has expired and no authorisation for that vessel to fish has been withdrawn by another Party within the last three years (Article III (5a)). The obligation to refuse authorisation would apply even where the vessel was previously registered in the territory of a non-Party, provided sufficient information was available about the circumstances of the vessel (Article III (5b)). Exceptions would be allowed where Australia determined that to grant an authorisation to a particular vessel would not undermine the object and purpose of the Agreement (Article III (5d)), or the ownership of the vessel had changed and the previous owner had no further legal beneficial or financial interest in, or control of, the vessel (Article III (5c)).

17. The Agreement would require Australia to ensure that Australian-flagged vessels authorised to fish on the high seas are properly marked for identification purposes (Article III (6)) and provide to Australian authorities all information necessary to enable fulfilment of obligations under the Agreement (Article III (7)). This may include catch and landing information.

18. The Agreement would require Australia to take enforcement measures against Australian-flagged vessels that fish on the high seas that act in contravention of the Agreement, and where appropriate, make such contraventions an offence under national legislation. Enforcement measures must be of sufficient gravity to secure effective compliance, and deprive offenders of the benefits accruing from their illegal activities. For

¹ Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

serious offences, such measures would have to include refusal, suspension or withdrawal of high seas fishing authorisation (Article III (8)).

19. The Agreement would require Australia to establish and maintain a record of all Australian-flagged vessels authorised to fish on the high seas (Article IV).

International cooperation

20. Under the Agreement, Australia would have to provide specific, up-to-date information to the FAO regarding Australian-flagged vessels authorised to fish on the high seas (Article VI (1-5)). This includes any exemptions granted to vessels less than 24 metres long, the number and type of such vessels, and the areas in which they operate. Australia would be required to promptly report to the FAO when an Australian-flagged vessel engaged in activity that undermines the effectiveness of international conservation and management measures (Article VI (8a)). Such reporting would have to include information on the identity of the vessel and any action taken against the vessel.

21. To assist other flag States to identify fishing vessels flying their flag that are reported to have undermined the effectiveness of international conservation and management measures, Australia would be required to exchange information relating to activities of fishing vessels (Article V (1)). The Agreement would require Australia to promptly notify the flag State where there are reasonable grounds to believe that a foreign-flagged vessel voluntarily in an Australian port has been used for an activity that undermines the effectiveness of international conservation and management measures (Article V (2)).

22. The Agreement would require Australia to report to the flag-State and, as appropriate, to the 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. Full supporting evidence must be provided to the flag State, and a summary of the evidence to the FAO (if the FAO was informed) (Article VI (8b)).

23. Australia would be required to inform the FAO if an authorisation is granted to a vessel, having determined that the vessel would not undermine the object and purpose of the Agreement, despite the withdrawal or suspension of an authorisation for that vessel by another Party in the past (Article VI (9)).

24. The Agreement would oblige Australia to exchange information with other Parties on the implementation of the Agreement (Article VI (11)), and exchange information with other Parties regarding fishing vessels flying the flag of non-Parties that engage in activities that undermine international conservation and management measures (Article VIII (3)).

25. Parties to the Agreement would be required to cooperate to take action to deter fishing vessels flagged to non-parties from engaging in activities that undermine international conservation and management measures (Article VII(2)). Parties to the Agreement would also be directed to cooperate for the purposes of assisting developing countries that are Parties to fulfil their obligations under the Agreement (Article VII), to encourage non-Parties to accept the Agreement (Article VIII (1)), and to enter into cooperative agreements as appropriate on a global, regional, sub-regional or bilateral basis to promote the objectives of the Agreement (Article V (3)).

Exemptions

26. Australia would be entitled to exempt vessels less than 24 metres long from the application of the Agreement provided that such an exemption would not undermine the object and purpose of the Agreement (Article II (2)), and provided also that effective preventative measures were taken against any exempt vessels undermining the Agreement (Article III (1b)).

Implementation

27. Many of the obligations under the Agreement may be implemented administratively or under existing Commonwealth legislation, in particular the *Fisheries Management Act 1991* (FMA). However, implementation of a number of the obligations under the Agreement will require new legislation.

28. Amendments will be made to the FMA and the *Fisheries Administration Act 1991* to provide for:

- additional statutory functions and objectives of AFMA to enable AFMA to ensure that fishing by Australian-flagged vessels on the high sea is conducted in a manner that is consistent with Australia's international obligations and to ensure that AFMA is able to give effect to the information exchange obligations under the Agreement (AFMA will be responsible for the practical implementation and administration of obligations under the Agreement);
- prohibiting Australian-flagged vessels from conducting fishing on the high seas unless authorised by AFMA;
- requiring AFMA to authorise Australian-flagged vessels to fish on the high seas only where it is satisfied that to do so would be consistent with Australia's obligations under international agreements;
- imposing a requirement on Australian-flagged vessels authorised to fish on the high seas to refrain from engaging in activities that undermine international conservation and management measures; and
- extending the powers of AFMA to cancel a vessel's authorisation to fish on the high seas if the vessel ceases to be entitled to fly the Australian flag.

Costs

29. Entry into force of the Agreement for Australia will not impose a significant burden or cost on the Australian Government. AFMA is expected to incur additional costs of approximately \$7,380 in the first year and \$5,580 in each following year associated with collecting and supplying information to the FAO. Many of the obligations imposed by the Agreement are already being met. AFMA addressed changes to licensing and information exchange required by the Agreement when implementing the UNFSA. Under the government's cost recovery policy, additional licensing costs and directly attributable logbook costs associated with implementation of the Agreement will be recovered from industry.

Consultation

30. Views on Australia's acceptance of the Agreement have been sought from the Australian fishing industry, government agencies and non-government organisations. A list of these parties is at *Attachment B*. States and Territories were consulted through the senior State agency officials on the Standing Committee on Fisheries and Aquaculture, the capture fisheries functions of which have now been taken over by the Natural Resource Management Ministerial Council. The Agreement was included on the schedule of treaties circulated through the Commonwealth-States-Territories Standing Committee on Treaties.

31. The AFMA Board supported the purpose and intent of the Compliance Agreement, but expressed a broad concern regarding funding for AFMA's international fisheries commitments. It is proposed that this issue be addressed through consultation between AFFA and AFMA, a financial review and if necessary the seeking of additional funds. The Australian Seafood Industry Council, Greenpeace, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and all States and Territories expressed support for the proposed Treaty Action.

32. Contributions from Austral Fisheries, Petuna, the Sub-Antarctic Management Advisory Committee and the East Coast Tuna Boat Owner's Association were generally supportive of the Agreement, however some concerns were raised regarding the proposed Treaty action, most importantly the manner in which the Agreement would affect the application of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to the high seas; the ability of Australian companies to charter foreign-flagged vessels for fishing on the high seas; and the disclosure of commercially confidential catch position and landing data.

33. Concerns regarding the application of the EPBC Act to the high seas are general concerns that are not affected by or related to Australia's acceptance of the Agreement. Those with a concern about charter vessels were informed that acceptance of the Agreement would not affect the legal ability of Australian companies to charter foreign-flagged vessels for fishing on the high seas. In relation to commercially confidential catch position and landing data, those with a concern were informed that acceptance of the Agreement would not alter current requirements in that regard. While catch position and landing data may be required by the flag-State to ensure vessels are not undermining the effectiveness of international conservation and management measures, such information does not have to be provided to the FAO.

Regulation impact statement

34. A Regulation Impact Statement is attached.

Future treaty action: amendments, protocols, annexes and other legally binding instruments

35. The Agreement does not provide for the negotiation of future legally binding instruments such as protocols or annexes.

36. Under Article XIII of the Agreement, any Party may propose amendments to the Agreement by notice to the Director-General of the FAO. The adoption of an amendment would require the approval of the Parties at a regular or special session of the FAO Conference and would enter into force following acceptance by two-thirds of the Parties to

the Agreement. Any amendments involving new obligations for Parties would enter into force only for those Parties that accept the amendment. All amendments to the Agreement will be deemed to involve new obligations for the Parties unless the FAO Conference decides otherwise at the time of approving the amendments.

Withdrawal or denunciation

Under Article XIV of the Agreement, Parties will be entitled to withdraw from the Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force . Withdrawal would take effect one calendar year after the lodgement of notice in writing to the Director-General of the FAO.

Contact details

International Fisheries
Fisheries and Aquaculture
Department of Agriculture, Fisheries and Forestry - Australia

Attachment A Estimated gross value of Australian fisheries that may benefit from improved regulation of high seas fishing under the Compliance Agreement

Table 1. Estimated gross value of Australian fisheries that may benefit from improved regulation of high seas fishing under the Compliance Agreement² (based upon catches in 2000-2001).

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

* Estimated value: too few operators to allow disclosure of exact figures.

Source: ABARE Fisheries Statistics, BRS Fisheries Survey Reports, AFMA.

² Includes:

- species Australia fishes for on the high seas
- species fished for in the AFZ that are highly migratory or straddling stocks or are dependent upon high seas for recruitment

Attachment B Organisations Consulted

Australian Fishing Industry

- readers of 'AFMA News'
- participants at the National Fisheries Conference 2000
- Australian Seafood Industry Council
- Australian Tuna Boat Owner's Association
- East Coast Tuna Boat Owner's Association
- South-East Trawl Fishing Industry Association
- South Tasman Rise Australian Trawl Association
- Australian fishing companies operating on the high seas: Ocean Fresh Fisheries Pty Ltd, Petuna Group, Lorjona Pty Ltd, Onward Fishing Unit Trust, A Raptis and Sons, Austral Fisheries
- Fisheries Management Advisory Committees (MACs): Eastern Tuna MAC, South-east Non-Trawl MAC, Sub-Antarctic MAC, Southern Bluefin Tuna MAC, South-west Tuna and Billfish MAC

Non-government organisations

- Australian Conservation Foundation
- ISOFISH
- World Wide Fund for Nature
- Greenpeace
- Traffic Oceania
- Humane Society International

Commonwealth Government Agencies³

- Department of Foreign Affairs and Trade
- Attorney-General's Department
- Environment Australia
- Department of Transport and Regional Services
- Department of Industry, Science and Resources
- Department of Finance and Administration
- Department of Defence
- Department of Justice and Customs
- Australian Fisheries Management Authority
- Commonwealth Scientific and Industrial Research Organisation

State Government Agencies

- Standing Committee on Fisheries and Aquaculture, the capture fisheries functions of which have now been assumed by the Natural Resource Management Ministerial Council

³ Note: Agencies at time of consultation