

**National Interest Analysis [2011] ATNIA 24**  
**with attachment on consultation**

**Southern Indian Ocean Fisheries Agreement**  
**(Rome, 29 December 2006)**

**[2006] ATNIF 31**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006) [2006] ATNIF 31**

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

1. It is proposed that Australia ratify the *Southern Indian Ocean Fisheries Agreement* (the Agreement) as soon as practicable after the tabling process is finished. The Agreement will apply to the high seas of the southern Indian Ocean outlined in its Article 3 (the Area).
2. The Agreement will enter into force 90 days after the Depositary (the Director-General of the Food and Agriculture Organization of the United Nations (FAO)) receives the fourth instrument of ratification, acceptance or approval. At least two of the four instruments received must have been deposited by coastal States adjacent to the Area.
3. The Agreement was adopted by a conference of plenipotentiaries in Rome, Italy on 7 July 2006. As at 1 August 2011, the Agreement had received ten signatures and three instruments of ratification, acceptance or approval, including two from coastal States adjacent to the Area. In addition, one participant had acceded to the Agreement. Accordingly, the Agreement will enter into force following the deposit of the next instrument of ratification, acceptance or approval. Australia signed the Agreement on 29 December 2006 and our ratification, at this stage, would bring the Agreement into force.

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

4. The Agreement establishes a means for Contracting Parties to manage and conserve non-highly migratory fishery resources in the high seas of the southern Indian Ocean. The Agreement promotes the objective of long-term conservation and sustainable use of fisheries resources in the Area, through applying principles such as the precautionary approach and an ecosystem-based approach to fisheries management. Under the Agreement, the Meeting of Parties may determine allocations of total allowable catches for each Party and adopt other conservation and management measures in pursuance of the Agreement's objective.
5. As a Contracting Party to the Agreement, Australia would be able to participate in the management of fishery resources in the Area and secure a share of these resources for the Australian fishing industry. Some of the fish stocks that will be managed on the high seas under the Agreement are likely also to 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 Agreement would further enhance Australia's international reputation as a responsible fishing nation.

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

6. The Agreement will establish a cooperative management framework for Contracting Parties to effectively manage non-highly migratory fishery resources within the Area, which covers a large area of high seas in the southern Indian Ocean. These fishery resources are important to the Australian fishing industry, which has been active in the Area for over a decade. As a Contracting Party, Australia would be able to secure continued access for the Australian fishing industry to these commercially valuable fishery resources, influence the substance and standard of the management arrangements adopted under the Agreement, and endeavour to ensure that these measures are compatible with the high standards already implemented for Australian industry domestically. This would allow Australia to both safeguard the interests of industries that harvest these resources and conserve marine biodiversity.

7. In 1999-2000 orange roughy stocks were discovered in the high seas of the southern Indian Ocean. At that time, those stocks were being seriously depleted by heavy fishing resulting from a lack of cooperative management arrangements being in place between coastal and distant water fishing States. Over exploitation and depletion of fishery resources, such as orange roughy, can have severe environmental costs and impacts on the fishing industry, including the Australian fishing industry. Concern over this situation prompted Australia, together with a number of other countries and entities with an interest in the fishery resources of the southern Indian Ocean, to develop the Agreement to facilitate cooperation in managing these resources to preclude further over-exploitation.

8. 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 Agreement are associated with vulnerable marine ecosystems, and the Agreement will provide a regional decision-making forum through which standards to manage the impacts of fishing on these ecosystems will be adopted and implemented.

9. 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 (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 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 Agreement Area. These organisations are 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 Agreement 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 South Pacific Regional Fisheries Management Organisation (which will be established by the *Convention on the Conservation and Management of High Seas Resources of the South Pacific Ocean*, [2010] ATNIF 51).

10. Consistent with Article 17 of UNFSA, were Australia not to ratify the Agreement, Australian fishing vessels would not be able to fish for non-highly migratory resources in the Agreement area unless Australia agreed, as a cooperating non-Contracting Party, to apply any measures adopted for those resources by the Contracting Parties. In practice, this would mean that Australia would still be bound to give effect to all measures adopted by the Contracting Parties through the Meeting of the Parties, but would not be able to participate in the development of those measures.

11. It is important that Australia ratify this Agreement as soon as practicable. Australia was active in the negotiation of the Agreement and ratification will further enhance Australia's reputation as a responsible fishing nation and underline our commitment to effective fisheries management practices. It is necessary that Australia be among the original ratifying Parties in order to participate as a member at the first Meeting of the Parties, at which important rules and procedures will be adopted. These include decisions that will affect Australia's future participation in the Agreement, 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 Agreement requires Contracting Parties to cooperate, in accordance with UNCLOS and international law, to ensure the long-term conservation and sustainable use of non-highly migratory fishery resources in the southern Indian Ocean and apply principles such as an ecosystem-based approach to fisheries management and the precautionary approach.

### *Conservation and management measures*

13. Australia would be obliged to promptly implement the Agreement and any conservation and management measures adopted by the Meeting of the Parties, and take appropriate action to ensure the effectiveness of such measures (Article 10(1), subparagraphs (a) and (b)). Australia would also be required to comply with all decisions of the Meeting of the Parties, which are legally binding pursuant to Article 8(3), and are likely to include:

- measures to ensure the long-term sustainability of the fishery resources (Article 6(1)(d));
- measures to promote cooperation in the research into and management of fishery resources, including with respect to compatible management for stocks that straddle adjacent areas under national jurisdiction (Article 6(1), subparagraphs (b) and (g));
- adoption of generally recommended international minimum standards for fishing (Article 6(1)(e));

- rules and procedures for monitoring, control and surveillance of fishing activity (Article 6(1)(h)); and
- measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (Article 6(1)(i)).

*Obligations to provide information*

14. Australia would be under an obligation to collect and exchange sufficient and verified scientific, technical and statistical data on fishery resources and the implementation of measures adopted under the Agreement (Article 10(1)(c)). This would include providing a statement to the Meeting of the Parties on any sanctions imposed for violations of conservation and management measures, and on measures taken by Australia for straddling stocks occurring in waters under Australian jurisdiction adjacent to the Area (Article 10(2)).

15. Australia would be obliged to maintain and share a record of Australian fishing vessels authorised to fish for fishery resources in the Area (Article 11(3)(b)). In addition, Australia would be required to collect and share complete and accurate data concerning fishing activities by Australian fishing vessels in the Area, whilst maintaining, where appropriate, the confidentiality of data as required under national legislation (Article 11(3), subparagraphs (c) and (d)).

16. Australia would also be obliged to exchange information on the activities of non-Contracting Parties' vessels fishing in the Area (Article 17(2)). Australia would be obliged to inform any non-Contracting Party of any activity undertaken by its nationals or flagged vessels which undermined the effectiveness of the Agreement (Article 17(3)).

*Flag State duties*

17. As a flag State, Australia would be obliged to take measures to ensure that Australian-flagged fishing vessels comply with the Agreement (Articles 10(3) and 11(1)(a)) and ensure that Australian vessels do not conduct unauthorised fishing within the Area or in waters under national jurisdiction adjacent to the Area (Article 11, paragraphs (1)(b) and (2)). Australia would also be required to use a satellite vessel monitoring system for Australian vessels fishing in the Area (Article 11(1)(c)), investigate alleged serious violations of the Agreement by Australian vessels and report on any action taken in response to such violations (Articles 10(4) and 11(3)(e)).

18. Australia would also be obliged to take measures, to the greatest extent possible, to ensure that its nationals and fishing vessels owned or operated by its nationals fishing in the Area comply with the Agreement and conservation and management measures adopted by the Meeting of the Parties (Article 10(3)).

*Port State duties*

19. Australia would have certain obligations in respect of vessels, including foreign vessels, in Australian ports (Article 12). As a port State, Australia would be obliged to:

- give effect to any conservation and management measures adopted by the Meeting of the Parties to inspect documents, fishing gear and catch on board fishing vessels voluntarily at Australian ports or offshore terminals (Article 12(2)(a));

- allow fishing vessels to land, tranship catch or receive supplies only if satisfied that the fish on board were caught in a manner consistent with the Agreement and measures under it (Article 12(2)(b)); and
- assist a flag state Contracting Party, if requested, to ensure compliance with the Agreement and measures under it by vessels of the flag State in Australian ports (Article 12(2)(c)).

20. If Australia considered that a fishing vessel of another Contracting Party using Australia's ports or offshore terminals had violated the Agreement, or measures under it, Australia would be required to inform the flag State concerned and the Meeting of Parties and provide full documentation of the matter (Article 12(3)).

### **Implementation**

21. 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**

22. The entry into force of the Agreement will not impose a significant burden or cost on the Australian Government. Many obligations (including those obligations listed above to provide information) imposed by the Agreement are met through the current activities of the Australian Fisheries Management Authority (AFMA) and the Department of Agriculture, Fisheries and Forestry (DAFF).

23. The costs to Australia of becoming a Contracting Party are minimal. The Agreement does not require the establishment of a permanent secretariat and the only mandatory fiscal obligation is that Contracting Parties will make contributions to the budget (Article 5(4)). This membership 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.

24. 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 Parties. Meeting costs will be paid for by the relevant host state or regional economic integration organisation. The annual meeting will be held, where possible, alongside other regional meetings to minimise travel costs. No costs for Australia's participation will be incurred by the Australian fishing industry.

25. 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 Cooperating Parties with respect to Australian fishing vessels licensed to fish in the Area. In line with AFMA's cost recovery impact statement, these costs will be partially attributed to industry and partially to government.

26. 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**

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

### **Future treaty action**

28. Amendments to the Agreement may be proposed by any Contracting Party, but must be adopted by consensus of all Contracting Parties (Article 21(2)). Amendments would enter into force 90 days after the Depositary receives instruments of ratification, acceptance or approval of such amendments from all Contracting Parties who held this status at the time the amendment was approved (Article 21(3)). Any amendments to the Agreement would be subject to Australia's domestic treaty processes.

29. The Meeting of the Parties can make decisions on fisheries conservation and management matters in accordance with its responsibilities set out in Article 6. Article 8 provides that decisions on matters of substance shall be taken by the consensus of the Contracting Parties present, while decisions on other matters shall be taken by a simple majority of Contracting Parties present and voting. Decisions adopted by the Meeting of the Parties shall be binding on all Contracting Parties.

30. Ratification, acceptance or approval of the Agreement may be made subject to reservations. Reservations will become effective only upon unanimous acceptance by all Contracting Parties. Failing such acceptance, the state or regional economic integration organization making the reservation will not become a Contracting Party to the Agreement (Article 28(1)). It is not proposed that Australia make any reservation with respect to the Agreement.

### **Withdrawal or denunciation**

31. Any Contracting Party may withdraw from the Agreement at any time after the expiry of two years from the date the Agreement entered into force for that Contracting Party. The withdrawal will become effective 90 days after written notice is received by the Depositary (Article 26).

32. Withdrawal from the Agreement would be subject to Australia's domestic treaty processes.

33. The Agreement will be automatically terminated if, as a result of withdrawals, the number of Contracting Parties drops below three (Article 27).

**Contact details**

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



## ATTACHMENT ON CONSULTATION

### Southern Indian Ocean Fisheries Agreement (Rome, 29 December 2006) [2006] ATNIF 31

#### CONSULTATION

##### Commonwealth departments and agencies

- *Attorney-General's Department*
- *Australian Fisheries Management Authority*
- *Australian Bureau of Agricultural and Resource Economics and Sciences (then Bureau of Rural Sciences)*
- *Department of the Sustainability, Environment, Water, Population and Communities (then Department of the Environment and Heritage)*
- *Department of Foreign Affairs and Trade*
- *Department of the Prime Minister and Cabinet*

34. Commonwealth departments and agencies were consulted throughout the intergovernmental consultation process for the negotiation of the text for the Agreement (2002 to 2006). Interdepartmental meetings were held regularly between relevant Commonwealth departments and agencies in the development phase, and Commonwealth departments and agencies were directly involved in the development of an agreed whole-of-government Australian negotiating position. Approval of the Australian negotiating position was sought from relevant ministers prior to each Intergovernmental Consultation.

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

36. Letters were sent on 20 June 2006 to seek the support of the Prime Minister and relevant ministers for Australia's signing of the Agreement. All agreed to Australia signing the Agreement.

##### State and Territory departments

37. 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*

### *Natural Resources Management Marine and Coastal Committee*

38. The Natural Resources Management Marine and Coastal Committee is an 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.

39. States and Territories were informed of the progress of the Agreement on various occasions between 2 July 2004 and 2 February 2007 via their involvement in the Marine and Coastal Committee, under the Natural Resource Management Ministerial Committee. These discussions were conducted at meetings on 2 July 2004, 1 July 2005, 3 February 2006, 29 November 2006 and 2 February 2007.

### *Standing Committee on Treaties*

40. States and Territories were also notified about the progress of the negotiations through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). The Schedule of Treaties distributed to SCOT provided notification of the negotiation and signature of the Agreement and that the Agreement was under review prior to ratification. An out of session paper was circulated on 22 May 2006 to SCOT, providing States and Territories with the opportunity to comment on the text of the Agreement prior to Australia's signature on 29 December 2006. The comments received by States and Territories were supportive of the proposal.

41. Further information on the Agreement and its entry into force was provided to SCOT in September 2008, September 2009 and September 2010. A draft National Interest Analysis was circulated to SCOT representatives on 5 February 2009, with all responses being supportive of Australia ratifying, and comments were included in the NIA. SCOT members have also been regularly updated on the progress of the Agreement through briefings presented biannually at SCOT meetings, usually in March and September.

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

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

- *Relevant commercial licence holders*
- *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*

43. 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 Agreement. These bodies support Australia's ratification of the Agreement.

44. Consultations with industry (including relevant commercial licence holders and industry groups) began in 1999 concerning the orange roughy fishery in the southern Indian Ocean and the potential for the development of a regional fisheries management organisation in the Area. Industry representatives were invited to attend the intergovernmental consultations. Letters were sent to industry members following each intergovernmental consultation informing them of the meeting outcomes.

45. A copy of the draft text of the Agreement was sent to industry on 16 May 2006 seeking their comments. Industry responded positively to the draft text.

46. The support of industry for a regional fisheries management organisation in the southern Indian Ocean has been highlighted by the development of the industry body, the Southern Indian Ocean Deepwater Fishers' Association (SIODFA).

47. Additional letters were sent to commercial industry, recreational and game fishing organisations and NGOs on 11 June 2008 and 8 April 2011 seeking comment on the proposed ratification of the Agreement. All responses highlighted continued support for the Agreement. Some comments were not relevant to the ratification stage but will be considered during implementation of the Agreement. Continued consultation and dissemination of information will continue as progress is made.

### **General public**

48. A press release was issued by the Hon Warren Truss MP, then Minister for Agriculture, Fisheries and Forestry on 21 June 2000 to announce Australia's intention to participate in the development of the Agreement.

49. A number of articles have been published in *AFMA News* (July 2000, October 2001) 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 southern Indian Ocean.

50. On 12 July 2006 the Food and Agriculture Organization website's newsroom published a summary of the opening for signature of the Agreement that had occurred the preceding week. No comments were received from the public.