

PROPOSED CITES LISTING FOR TOOTHFISH

10.1 Australia advised the Commission that it had nominated toothfish for listing under Appendix II of the Convention for the International Trade in Endangered Species (CITES). Australia stated that this nomination was not intended to undermine the role of CCAMLR and that Australia did not wish to see the implementation of dual measures in respect of toothfish. Australia stressed that CCAMLR was the primary body responsible for measures related to toothfish and that the CDS was the key element in managing international trade in the species.

10.2 The majority of the Commission opposed the CITES listing proposal for a variety of reasons.

10.3 Japan noted that Australia had sought the cooperation of another international body to assist CCAMLR. Japan expressed the belief that, in accordance with established practices of CCAMLR, the issue should first have been discussed in the Commission before any action was taken. Japan pointed out that the agenda item 'Cooperation with Other International Organisations' is included on the Commission agenda every year. Thus, Japan questioned why Australia took such an action unilaterally without prior consultation with other CCAMLR Members. Japan expressed regret that the Executive Secretary of the Secretariat should have been in the position of having to provide a response to the CITES Secretariat and FAO without prior guidance from the Commission.

10.4 Japan acknowledged the notion of Australia that the proposal to list toothfish under CITES Appendix II could facilitate the control of trade in toothfish amongst non-participating Parties to the CDS. However, Japan was of the opinion that any benefits would be minimal in comparison to the risks involved, the greatest of these being that a CITES listing may undermine the competence of CCAMLR whilst expanding the competence of CITES on commercially exploited marine species such as toothfish.

10.5 Japan refuted the argument that a CITES listing would provide greater coverage of the CDS by the 160 CITES member countries. Japan noted that, although CCAMLR only comprises 31 participating Parties, these countries comprise 60% of the global land mass and, with the inclusion of China, 85% of the global population. Japan also noted that the major importers of toothfish are Japan, European Community and the USA, all of which are CCAMLR Members. The People's Republic of China, Mauritius and Seychelles are also CDS participating Parties and have expressed their willingness to cooperate with CCAMLR whilst Mozambique has sent a representative to CCAMLR-XXI. Japan therefore considered that CCAMLR is not only a competent organisation to manage toothfish but also fully competent to tackle related problems.

10.6 Japan also pointed out that the CITES listing proposal may affect the reputation of CCAMLR and had generated considerable publicity which may be misconstrued. In particular, Japan noted that the proposal was submitted by Australia, the Depositary State and host country of CCAMLR. Japan expressed concern that this action might be construed as evidence that CCAMLR Members believe that CCAMLR is not competent to manage toothfish.

10.7 Based on these concerns, Japan respectfully requested that Australia reconsider the proposal with a view to withdrawing it.

10.8 Norway requested two points of clarification from Australia. Firstly, Norway was of the understanding that Australia had undertaken some consultations with other CCAMLR Members prior to submitting the CITES listing proposal. Norway enquired as to the results of those consultations and whether there had been general support for such a listing.

10.9 Norway also requested clarification of Australia's interpretation of Article XXIII of the Convention which gives provision for the Commission to enter into working relationships with other international bodies. Norway pointed out that, in its opinion, Article XXIII did not provide an opportunity for individual countries to act on behalf of the Commission.

10.10 Norway stated that it is fully cognisant of the seriousness of IUU fishing and appreciative of the many new and appropriate measures which, in particular, Australia has proposed in order to address the issue. However, CCAMLR has in place fairly good and sophisticated systems to address the problem of IUU fishing and Norway is optimistic that these could be strengthened at CCAMLR-XXI.

10.11 Norway expressed disappointment with Australia's decision to propose toothfish for listing under CITES Appendix II and stated that it is against the proposal as it is unable to see that the criteria for such a listing have been met. CITES was established to remedy situations where international trade was endangering the survival of certain species. Norway pointed out that management decisions for marine species were normally made on the basis of stocks, rather than species. Generally speaking, one or more stocks of a species may be in a difficult condition whilst, at the same time, other stocks of the same species may be in a very good condition. In this regard, Norway noted that the Scientific Committee had proposed an increase of the total allowable catch limit for *D. eleginoides* in Subarea 48.3 for the next season.

10.12 Norway conceded that CCAMLR needed to do more in future to protect the different stocks of toothfish, but was of the opinion that Member countries would be able to take appropriate actions within CCAMLR to regulate and, in some instances, even temporarily close some fisheries if required and so to apply current CITES mechanisms to commercial fisheries is the wrong answer. Instead, Norway is in favour of appealing to other Member countries in CITES to voluntarily adopt the CDS and encourage all countries fishing or trading toothfish to become Members of CCAMLR.

10.13 Norway concluded that the proposal of Australia has not been discussed by CCAMLR and does not enjoy the support of the Commission and urged Australia to taking into account the inevitable consequences of this fact. CCAMLR is the body responsible for scientific advice and management measures for the conservation and sustainable use of toothfish. If Australia does not withdraw its proposal, the credibility and authority of CCAMLR might be seriously undermined.

10.14 In response to the first question from Norway, Australia advised that it had undertaken intersessional consultation with Members prior to submitting the CITES listing proposal, and acknowledged that responses received had generally been non-committal, although some negative responses had been indicated, as well as some positive responses.

10.15 In response to Norway's second question, Australia stated that it was mindful of the need to consult with CCAMLR Members before entering into arrangements with other Parties. Australia pointed out that it had not instructed the Commission to enter into an arrangement with another Party, but had merely asked it to consider the possibility.

10.16 The European Community indicated that its 15 Member States will be represented at the upcoming 12th Conference of the Parties (COP-12) to CITES in Santiago, Chile. In respect of the proposal tabled by Australia to include toothfish in CITES Appendix II, a detailed discussion has taken place within the European Community on the merits of this proposal and the possible effects on the operation of CCAMLR's CDS.

10.17 The European Community therefore considered that the arguments set out in the Australian proposal are not conclusive with regard to the inclusion of toothfish in CITES Appendix II.

10.18 The European Community maintained reservations in relation to ensuring that the CDS and the CITES certifications and controls could be made to work simultaneously in a manner that is complementary and efficient. Whilst the European Community favours cooperation and synergy between CITES and CCAMLR, it believes that it is still unclear that the Australian proposal would achieve this objective in the best possible way. Therefore, the European Community reiterated considerable reservations regarding the appropriateness of the CITES listing proposal submitted by Australia.

10.19 Russia emphasised that it had serious doubts as to the appropriateness of the Australian proposal. Russia was of the view that available scientific data on the status of toothfish stocks were inadequate to reach an unequivocal conclusion of the necessity for such a listing. Russia also noted that the Scientific Committee had recommended increasing the total allowable catch of *D. eleginoides* in one of the subareas for the forthcoming season. At the same time, *D. mawsoni* had not yet been adequately studied and remained virtually unexploited.

10.20 Russia expressed the belief that the involvement of CITES in matters of CCAMLR competency could seriously undermine the very basis of the CCAMLR Convention and lead to the replacement of well-established and effective measures with other measures which do not take into account specific aspects of the conservation of Antarctic marine living resources. Russia noted that CCAMLR had by no means exhausted all the options in improving methods of managing toothfish. Therefore, acceptance of the Australian proposal would be counterproductive.

10.21 Chile recalled that it had advocated early consultations on this matter within the framework of the Commission and not in a unilateral manner inconsistent with Article XXIII of the Convention. Its reflection of the proposal to list toothfish in CITES Appendix II was based on a thorough analysis made by the competent national scientific and administrative authority (SERNAPESCA) for marine species under the CITES Convention. It was indisputable that the proposal did not meet any of the CITES criteria or conform to any of the CITES references.

10.22 In addition, Chile was of the opinion that suitable complementarity between CCAMLR and CITES could not be achieved before:

- (i) 'introduction from the sea' criteria explicitly acknowledged the UNCLOS regime;
- (ii) the recommendation from the FAO Second Technical Consultation involving changes to the CITES criteria, strengthening scientific evaluation processes and evaluating proposals on an informed case-by-case basis were accepted by CITES; and
- (iii) CITES recognised that any determination concerning the listing of marine species should be preceded by a recommendation of the scientific body of the organisation entrusted with the conservation and management of the concerned marine living resources.

10.23 In the meantime, Chile had submitted a draft resolution to the forthcoming CITES conference (COP-12) requesting that its Parties voluntarily adopt the CDS. Whilst Chile could not accept all the CITES submission language informally submitted by Australia to the Commission, those statements listed in the background information of the informal Australian submission could adequately reflect a common position which Commission Members might endorse as a powerful message addressed to COP-12.

10.24 Spain firmly supported the role of RFMOs in the decision making and management of fisheries bodies to ensure responsible fishing activity throughout the whole fishing industry in accordance with the FAO Code of Conduct for Responsible Fisheries. This model of RFMOs is coordinated at the international level by FAO. Spain supports the CDS and the implementation by CCAMLR of a system of permanent control of the fishery and continues to involve the different national administrations of the States concerned. It is a simple system and participation is offered to all countries, which is why cooperation with CITES, as with any other organisation, should not undermine CCAMLR, but rather encourage CITES members to adopt the CCAMLR model.

10.25 The USA observed that there should be no doubt that CCAMLR was the competent body for the management of toothfish but, given the seriousness of IUU fishing, CCAMLR must continue to take action. The USA expressed its concern with statements that toothfish stocks are improving in status. The USA stressed that while the CDS is an appropriate mechanism to manage the international trade in toothfish, it would assist the CDS if CITES members were to acknowledge this and voluntarily adopt the CDS. However, the USA pointed out that there was a large amount of IUU fishing on this species and the Commission would be wise to work with other organisations on combating the problem. Therefore, the USA welcomed the opportunity to work at CITES COP-12 in order to improve acceptance of the CDS and suggested inviting a representative of CITES to attend CCAMLR-XXII.

10.26 New Zealand stressed that it is a strong advocate of action against IUU fishing. In its view, as part of the effort to combat this, CCAMLR should welcome cooperation with other organisations including CITES. New Zealand stated its support for Australia's CITES listing proposal, which it saw as complementing CCAMLR's role, and expressed surprise that it did not meet with the full agreement of the Commission.

10.27 The People's Republic of China expressed its willingness to cooperate with the Secretariat and CCAMLR in deterring IUU fishing and trade of toothfish to ensure that such trade is conducted in a legitimate manner. China noted that in the first nine months of 2002 it

had processed and re-exported nearly 15% of the total global catch. China stressed that it had undertaken all steps necessary to act in accordance with Conservation Measure 170/XX and noted that its participation in, and contribution to, the CDS could be considered as one of the most important successes of the CDS. China, therefore, did not believe it necessary to include toothfish in a CITES Appendix II listing and would be reluctant to see the credibility and competence of CCAMLR undermined.

10.28 Sweden noted that the European Community had already stated the views of Community members on this issue. Sweden stated that CCAMLR measures had overall priority in respect of the Commission Members and that the Commission was now working hard to enhance them. Sweden was of the view that a CITES listing could be discussed and considered if CCAMLR measures did not prove to be sufficiently effective. Sweden reiterated the concerns of several delegations noting that the criteria for listing toothfish have not yet been met and there were still several points of clarification outstanding.

10.29 Argentina noted that, while sharing Australia's opinion regarding the advisability of establishing cooperation and complementarity among international organisations, any process relating to the listing of marine species under CITES should be fully compatible with UNCLOS. In this regard, Argentina recalled that when CITES was adopted in 1973, its Article XIV duly took into account future developments and States' positions regarding the law of the sea. In fact, at that moment negotiations were already beginning at the Third Conference of the UN on the Law of the Sea.

10.30 ASOC noted Members' concerns that a listing of toothfish in CITES would undermine CCAMLR but advised that CITES had stated that CCAMLR would remain the fisheries management body responsible for toothfish, with CITES facilitating broader trade regulation and control. ASOC also noted the comments of some Members indicating that fisheries management was better done by a regional fisheries management authority. ASOC agreed that CCAMLR is the appropriate body for the management of toothfish and stated that the CITES Appendix II listing would not change CCAMLR's authority to set catch levels, regulate fishing methods and operate the CDS.

10.31 On the question of how CITES could address IUU fishing more effectively than CCAMLR, ASOC noted that the Scientific Committee and SCOI had indicated that IUU fishers are operating in CCAMLR waters and reporting their catches as taken outside the Convention Area. ASOC was of the opinion that a successful CITES listing would close such loopholes by extending CCAMLR's CDS to all toothfish caught and entering international trade. ASOC pointed out that CITES is a global convention with over 159 Parties, and strong compliance and enforcement mechanisms, whereas CCAMLR has 24 full Member States with limited enforcement capabilities.

10.32 ASOC acknowledged concerns that a CITES listing would increase the administrative burden on States. However, ASOC pointed out that the nomination proposes that CITES adopts the CDS for the purposes of CITES permit and certificate provisions, thus avoiding duplication. ASOC also expressed the opinion that a CITES listing would benefit legitimate toothfish operators because it would impose the same regulations on all toothfish traders.

10.33 ASOC noted Members' comments that toothfish should not be listed with CITES until 'introduction from the sea' issues have been resolved, but pointed out that catch documents could be considered equivalent to CITES certificates of 'introduction from the sea'. ASOC

expressed the view that CCAMLR has already invited voluntary cooperation with the CDS with limited success, thus, the proposal that CITES members voluntarily adopt the CDS would be of limited benefit in comparison to a formal CITES Appendix II listing which would make compliance with CCAMLR and/or CITES mandatory.

10.34 ASOC noted Members' comments that toothfish should not be listed with CITES as they are not endangered. However, ASOC advised that an Appendix II listing is intended to include species which are not now threatened with extinction but may become so unless trade is subject to strict regulation.

10.35 ASOC advised the Commission that the CITES Secretariat had reviewed Australia's proposal and had determined that Patagonian toothfish meets the CITES criteria for an Appendix II listing and that Antarctic toothfish also meets the criteria for an Appendix II listing under the 'look-alike' clause. The CITES Secretariat's Final Recommendation on this proposal supports the view that CITES and CCAMLR can be complementary, and that scope exists to use existing CCAMLR documentation as the basis for documentary requirements under CITES.

10.36 ASOC thanked the Government of Australia for its proposal to list toothfish under CITES Appendix II as well as the Government of New Zealand for its support. ASOC expressed extreme disappointment that Members are unable to take the opportunity of the extending CCAMLR measures to all CITES Parties and urged Australia not to withdraw the proposal.

10.37 Namibia advised that over the past days, the Commission and its Standing Committee on Observation and Inspection were tirelessly exploring a number of measures to minimise, within the framework of CCAMLR, the impact of IUU fishing on Patagonian toothfish. Opinions and views were put forward on how both Contracting and non-Contracting Parties could ensure compliance with CCAMLR conservation measures.

10.38 Namibia further stated that harvesting and marketing of toothfish from the CCAMLR Convention Area is currently administered and controlled through CCAMLR CDS which is functioning. Any existing loopholes have been identified for amendments to further strengthen the system. In this regard, CCAMLR still remains the competent fisheries management organisation with regard to toothfish.

10.39 Further, Namibia referred the Commission to its position on this matter as mentioned during the Second Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially Exploited Aquatic Species.

10.40 Namibia advised that there are initiatives under way by FAO to amend the existing CITES criteria when applied to commercially exploited species. In this regard, any initiative to accord CITES a greater role in marine resources management should be done with extreme caution.

10.41 Due to complications such a listing could have on any other commercially exploited species, and due to the initiatives on the table to adjust the existing criteria, Namibia is not in the position to consider the listing of toothfish in CITES Appendix II until such time as the listing criteria are satisfactorily amended.

10.42 South Africa endorsed the concerns of Namibia and stated that South Africa cannot support a CITES listing based on the current criteria. South Africa noted that it has sovereign territories in the Convention Area and would be reluctant to set a precedent for other fisheries, as this could have dire socio-economic consequences for South Africa as a developing nation. South Africa also pointed out that CCAMLR's existing measures are being further enhanced and that Members should rather focus efforts on improving application of the CDS.

10.43 South Africa noted that it had recently hosted the World Summit on Sustainable Development (WSSD) and referred to paragraph 2 of CCAMLR-XXI/BG/35 which reported that 'Sustainable development has three components, namely economic development, social development and environmental protection...Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives essential for sustainable development'. Mindful of the balance between developing nations and sustainable development, South Africa requested that Australia withdraw the proposal.

10.44 The Republic of Korea expressed appreciation for the efforts of Australia on the conservation and better management of CCAMLR fishery resources, including a proposal for the expansion of the CDS to non-Contracting Parties through CITES. Korea observed that this seems an innovative and constructive idea in some aspects. However, Korea noted that other aspects of the proposal to list toothfish under CITES must be considered in detail and that these should be considered by the whole Commission, not just by one Member. Korea reminded the Commission that CCAMLR has adopted a number of strong measures to combat IUU fishing, for example, the implementation of the CDS, the possible implementation of an electronic web-based CDS and Resolution 16/XIX. CCAMLR measures continue to develop and demonstrate the abilities of CCAMLR and should be given the opportunity to try and address the issue of IUU fishing.

10.45 Ukraine fully understood Australia's concerns regarding IUU fishing, but urged a more rational approach in addressing these concerns. Ukraine believed that the Australian proposal comprised two separate issues: (i) inclusion of toothfish in CITES Appendix II and (ii) cooperation between CCAMLR and CITES. Ukraine emphasised that it is unequivocally opposed to the inclusion of toothfish in CITES Appendix II. The Commission should instead focus its consideration on the second issue.

10.46 The Commission agreed to establish an informal group to discuss the issue in more detail. Norway pointed out that, as only one other Member had expressed support for the Australian proposal, the Terms of Reference for the group should only be to discuss an appropriate response to CITES on the issue. This recommendation was supported by another three Members.

10.47 Dr S. Stone, the Australian Parliamentary Secretary for the Environment and Heritage, addressed the Commission.

'As Parliamentary Secretary responsible for Antarctic matters, I welcome all Delegates to Australia and thank the Commission for the opportunity to address this, the Twenty-first, meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Since its first meeting in 1982, the Commission has established itself as the primary international body responsible for the conservation and rational use of marine resources in the oceans surrounding Antarctica. To this end, the Commission has taken significant steps to protect Antarctica's unique and fragile marine ecosystems, including measures to combat illegal, unreported and unregulated fishing (IUU) such as the introduction of a vessel monitoring system (VMS) and the implementation of a catch documentation scheme (CDS).

However, while these and other measures adopted by CCAMLR have improved the management of Antarctic fisheries and closed many loopholes open to IUU fishers, recent statistics and events combine together to provide us with a compelling story for the need for further action.

Scientific Committee findings show that the amount of fish recorded as being taken outside the CCAMLR area is not credible. Moreover, sightings and apprehensions of vessels fishing illegally within CCAMLR waters, including in Australia's EEZ around the Heard and McDonald Islands, during the past 12 months suggest that illegal, unregulated and unreported fishing is on the increase, despite significant efforts by CCAMLR.

The Australian Government is deeply concerned by these trends, which pose a serious threat to fish stocks as well as seabird populations. In this light Australia is strongly committed to CCAMLR and its efforts to combat IUU fishing. As such, Australia has recently increased its level of resources aimed at tackling this issue in Australia's EEZ around Heard Island and McDonald Islands. An area which is wholly within the CAMLR Convention Area.

The Australian Government is also frustrated at the apparent disregard of some countries for CCAMLR management and conservation measures. This disregard is undermining the credibility of CCAMLR. Australia therefore encourages all Members to reassess their obligations under the Convention and to take action against those who support and/or facilitate illegal fishing activities.

Australia's frustration at the illegal fishing that is occurring is not only found in our increased domestic efforts. It is also expressed in the package of initiatives that it has developed for consideration at this Commission meeting, and at the CITES meeting which begins in Chile next week.

Let me reiterate Australia's position – Australia is deeply committed to CCAMLR. Indeed, Australia takes all its treaty obligations very seriously. And Australia believes that in order to tackle some problems, it may have to use a range of instruments in a complementary and integrated fashion.

I will clarify to the Commission that Australia's CITES proposal remains on the CITES agenda. However, I will undertake to advise the other Ministers responsible for CITES considerations – Minister Kemp responsible for the Environment and Heritage, Minister Truss responsible for Agriculture, Forests and Fisheries and Minister Macdonald responsible for Fisheries and Conservation – on the views of Commission Members in regard to the CITES listing proposal, as well as the outcomes of this meeting.

As I have already mentioned, Australia has proposed a package of measures, which also includes a number of specific initiatives to combat IUU fishing at this meeting and I commend them to you. The initiatives include the establishment of a centralised reporting system for vessels fishing within the CCAMLR area, extending CCAMLR's competency to manage the harvesting of toothfish outside the CCAMLR area, and stricter verification and validation measures for the catch documentation scheme.

The proposal for a centralised reporting system reflects Australia's concern over the way in which the current vessel monitoring system is operating and aims to increase the transparency of the system. We are aware of an offer from the fishing industry representatives of a number of Member States to contribute up to \$70 000 towards the implementation of such a system. I understand this may include industry representatives from Australia, France, South Africa and New Zealand. I am happy to announce here that the Australian Government will match industry's contributions on a dollar-for-dollar basis should the Commission agree to implement a centralised reporting system.

The Scientific Committee of CCAMLR has informed us that, even though toothfish may be caught adjacent to the Convention Area, the level of misreporting is so great that it threatens CCAMLR itself. Australia has proposed that CCAMLR resolve this problem by taking steps to ensure the sustainable management of toothfish stocks on the high seas outside the CCAMLR area.

Australia recognises that the precautionary approach underpins the Commission's management decisions, and supports initiatives to ensure the long-term sustainability of the marine ecosystem and Southern Ocean fisheries. In this respect we welcome the continued use of the precautionary approach in estimating sustainable catch levels for toothfish and icefish.

Australia also welcomes the implementation of general measures to mitigate by-catch of seabirds, such as measures to combat the discharge of offal, night-setting and the use of streamer lines, as well as pursuing further development of strategies for mitigating by-catch of finfish, skates and rays.

In recognising the conservation objective of CCAMLR, Australia has recently announced the declaration of the Heard Island and McDonald Islands Marine Reserve and Conservation Zone. This reserve is wholly within Australia's Fishing Zone and does not affect CCAMLR new and exploratory fishery proposals or established fisheries. It protects nursery areas for a range of fish stocks, including toothfish, diverse and distinctive benthic habitats supporting a range of slow growing and vulnerable benthos, and prime foraging areas for a number of land-based marine predators, including threatened albatross and seals.

Finally, I would like to take this opportunity to congratulate all Parties on their resolve to tackle illegal, unreported and unregulated (IUU) fishing, and look forward to the outcomes of the Commission on initiatives to tackle this significant problem.'

10.48 Dr Stone thanked the Commission for the opportunity to address CCAMLR-XXI and commended the Commission for its resolve in addressing the issue of IUU fishing.

10.49 Dr Stone noted that recent statistics and events had provided CCAMLR with compelling reasons for the need for further action. Dr Stone advised that the Australian Government is deeply concerned at the levels of IUU fishing within Australia's EEZ inside Division 58.5.2 of the Convention Area and believed that a range of initiatives were required in order to address the problem. Dr Stone commended a suite of initiatives which Australia has submitted for consideration by the Commission, including centralised VMS reporting. In this regard, Dr Stone advised that an offer for A\$70 000 had been received from fishing industry representatives and that the Australian Government would match this contribution on a dollar-for-dollar basis should the Commission agree to implement centralised VMS reporting.

10.50 Dr Stone advised the Commission that the Australian CITES listing proposal remained on the CITES agenda. However, she undertook to advise other Australian Government ministers of the views of the Commission regarding the proposal, as well as the outcome of CCAMLR-XXI.

10.51 The Commission thanked Dr Stone for her address and thanked Australia for the many initiatives it has taken aimed at strengthening the work of CCAMLR.

10.52 Most Members who had spoken before against the CITES listing proposal, reiterated the main points from their earlier statements. These Members concurred with Norway in observing that the Australian CITES listing proposal was an unfortunate development and expressed disappointment that it had not been withdrawn. Members' main concerns were that the proposal was not based on scientific data from CCAMLR, did not meet the criteria for CITES listing, nor was it discussed amongst CCAMLR Members before submission to CITES. It was also pointed out that CCAMLR is the international body responsible for scientific advice and management measures for the conservation and sustainable use of toothfish and that only one other delegation (New Zealand) supported the proposal. There was general agreement that CCAMLR should explore possible cooperation between CCAMLR and CITES on the implementation of the CDS.

10.53 Several other Members not speaking previously also stated their position on the Australian proposal.

10.54 The UK endorsed the previous comments of Norway regarding Article XXIII of the Convention and noted that the response of the Commission supported the view that actions taken under Article XXIII must be instituted by consensus, not the unilateral action of one State. The UK also endorsed the previous comments of Ukraine, which clarified the difference between cooperation with CITES and the act of listing toothfish under Appendix II. The UK saw the virtue of cooperation between CITES and CCAMLR in respect of trade mechanisms so long as these could be shown to work both in a legal and a practical sense. Until this occurred, the UK believed that consideration of extending CITES provisions to toothfish would be premature.

10.55 The UK remained unconvinced of the rationale to list toothfish under CITES Appendix II and noted that the proposal had the potential to undermine both CCAMLR and the CDS. The UK observed that to persist with the proposal after the vast majority of the Commission had indicated their opposition would create tension, rather than cooperation

between the two treaties. The UK expressed great sympathy for Australia's frustration in addressing the issue of IUU fishing but requested that Australia withdraw the CITES listing proposal.

10.56 Chile thanked Dr Stone for her willingness to advise the Australian Government of the Commission's views and stressed the importance of clearly separating the listing of toothfish, a proposal which did not meet the Commission's consensus while cooperation between CCAMLR and CITES which gathered broad support and in whose context the different modalities envisaged by Australia and Chile should basically be addressed at the CITES Conference in Santiago.

10.57 France noted that France and Australia shared common concerns with respect to IUU fishing and a very efficient partnership had already been established between the two countries to combat IUU fishing activities; this partnership was now in the process of being institutionalised. However, whilst France acknowledged the good intentions of Australia, it warned that these might be counterproductive to Australia and to all CCAMLR Members as it had the potential to undermine the credibility of the Commission. France hoped that Australia had noted the opposition of the vast majority of Members and informed that, whilst it was in favour of cooperation with CITES, it was firmly opposed to an Appendix II listing for toothfish and urged Australia to withdraw the proposal.

10.58 Italy advised with regret that it could not support the CITES listing proposal and endorsed the views of France. Italy urged that the CDS should instead be strengthened and enhanced. Italy also warned of the possible danger for the credibility of CCAMLR of being weakened if toothfish was listed under CITES Appendix II.

10.59 The USA again noted that the meeting of the CITES Conference of Parties is an opportunity to: (i) promote CITES cooperation with CCAMLR; (ii) urge the member Parties of CITES to implement the CDS; and (iii) consider how CITES and CCAMLR might work together to reduce trade in toothfish illegally harvested.

10.60 Brazil thanked Australia for so many positive initiatives in favour of environmental conservation in general and in relation to Antarctica. However, Brazil endorsed the concerns of other Members and, therefore, could not support the proposal. Furthermore, Brazil was in favour of future cooperation with CITES.

10.61 Germany and Belgium stated that they had come to CCAMLR-XXI open-minded as to the Australian CITES listing proposal. However, Germany and Belgium, taking into consideration that the vast majority of the Commission opposed the proposal, believed that continued pursuit of the current proposal would not be in the interests of either Australia or CCAMLR.

10.62 New Zealand reiterated its support of the CITES listing proposal and commented that the views of those Members who had a different perspective on the matter from some of those who had spoken should be respected.

10.63 The vast majority of Members appealed to the Australian Government to take steps to quickly withdraw the proposal to list toothfish under CITES Appendix II in order that the credibility and authority of CCAMLR not be further undermined.

10.64 In subsequent discussions (for example under Agenda Item 15) the following additional comments were made.

10.65 Norway drew to the attention of the Commission the fact that there were two items relating to CCAMLR on the agenda of the forthcoming meeting of CITES. One, relating to cooperation with CCAMLR on toothfish trade, had been proposed by Chile. The other, for the listing of toothfish under Appendix II, had been proposed by Australia. Norway was disappointed that neither proposal had been discussed by the Commission before being proposed to CITES. Discussions during the current meeting had indicated the Commission's support for the thrust of the Chilean proposal, but Australia's proposal has met substantial opposition. Despite this being communicated to Australia, also at a political level, it has refused to withdraw its proposal for listing and was thereby harming the reputation and authority of CCAMLR.

10.66 Norway pointed out that Article XXIII of the Convention sets out how the Commission should cooperate with other organisations, and this provides no scope for unilateral representation by individual Members. Furthermore, Australia is not able provide the data that CITES would require for such a listing; this can only be supplied by CCAMLR itself.

10.67 Norway believed that CCAMLR can only communicate authoritatively with other organisations when it has first put its own house in order. Australia's action is preventing this by undermining the cohesion within CCAMLR, so Norway again called on Australia to withdraw its proposal.

10.68 The UK, in concurring with the views expressed by Norway, was also concerned that Australia was prepared to take a matter of direct relevance and responsibility of CCAMLR to another international body (CITES) even when that body had different objectives and decision-making procedures to those of CCAMLR. This could lead to CITES taking decisions which were directly at odds with the views of the vast majority of CCAMLR Parties. This, in the view of the UK, was not in line with the consensus mechanism, which was fundamental to CCAMLR and the Antarctic Treaty System more generally. The UK hoped that Australia was sufficiently communitaire to the consensus principles of the Convention to reconsider its position on the listing of toothfish.

10.69 Japan wished to be associated with the sentiments expressed by Norway and others on the subject of the proposal for CITES listing. If Australia intended to pursue this, Japan asked that Australia should make it clear to CITES that the proposal does not represent the will of CCAMLR.

10.70 In reply to Norway's comments, Australia reinforced the advice of Dr Stone that the views of the Commission would be communicated to the responsible Australian ministers. These views had been clearly and strongly expressed.

10.71 Australia repeated its earlier advice to the Commission that its proposal was based not only on good intentions, but also on the fact that CCAMLR was the relevant and competent authority, had the scientific competency and implemented the necessary global catch documentation scheme for toothfish. Australia advised that the proposal had not been

withdrawn and hoped that it could draw comfort from the comments of the European Community that the Commission is currently meeting to take decisive action to combat IUU fishing.

Summary on CITES

10.72 The Commission considered the proposal by Australia to list toothfish in CITES Appendix II. New Zealand supported this proposal as submitted. Most Members expressed extremely strong opposition to the proposal and regarded it as an unfortunate development. Nineteen Members urged Australia to withdraw its proposal to CITES.

10.73 The Commission concluded the following:

- CCAMLR is the body with primary competency for managing the conservation and rational use of toothfish in the Convention Area.
- The Scientific Committee of CCAMLR is the pre-eminent scientific body with respect to the biology of toothfish, its role in the Antarctic marine ecosystem, and the assessment of sustainable harvest levels.
- CCAMLR will continue to take enhanced measures to address IUU fishing.
- The CCAMLR Catch Documentation Scheme for *Dissostichus* spp. (CDS) is recognised as the appropriate trade documentation for trade in toothfish.
- CCAMLR will encourage greater adoption and use of the CDS by non-CCAMLR Members and, in this regard, would urge CITES Parties to require a CCAMLR CDS document on all toothfish imports.

10.74 The Commission considered it was essential to cooperate, if appropriate, with present and future RFMOs in assisting with the conservation and rational use of toothfish. It noted CCAMLR's Article XXIII in this respect, and concluded that further cooperation with CITES would be welcome.

10.75 The Commission also welcomed the interest of CITES in the CDS and will invite the CITES Secretariat to send a representative to CCAMLR-XXII. An invitation to this effect will be forwarded to the CITES Secretariat by the CCAMLR Secretariat.