ILLEGAL, UNREGULATED AND UNREPORTED (IUU) FISHING IN THE CONVENTION AREA

8.1 The Chair of SCOI, Dr H. Nion (Uruguay) presented the Committee's report on IUU fishing (Annex 5, paragraphs 5.1 to 5.116).

Information provided by Members under Articles X and XXII of the Convention

8.2 The Commission first considered advice from the Scientific Committee on the level of IUU catches in the Convention Area and on the impact of such catches on marine living resources. The Commission noted that in the Scientific Committee's report:

(i) the catches attributed by CDS reports of catches from outside the Convention Area in Areas 51 and 57 were unlikely to have come from those areas and most likely to have come from within the Indian Ocean sector of the Convention Area (SC-CAMLR-XXI, paragraphs 4.37 and 11.3);

(ii) IUU catches within the Indian Ocean sector of the Convention Area were most likely to be underestimated (SC-CAMLR-XXI, paragraph 4.39 to 4.41 and 11.3);

(iii) the current levels of IUU fishing reported from Areas 51 and 57 would have seriously depleted whatever stocks might have been present in those areas, if they were present at all;

(iv) current levels of IUU fishing have depleted stocks in Division 58.4.4 and in Subareas 58.6 and 58.7, and the catch rates in Division 58.5.1 have substantially declined (SC-CAMLR-XXI, paragraphs 4.35 and 11.3); and

(v) current levels of IUU fishing would substantially reduce populations of seabirds which have been taken as by-catch in longline fishing operations (SC-CAMLR-XXI, paragraphs 5.17 to 5.22 and 11.3).

8.3 The Commission noted with great concern that the information presented by the Scientific Committee indicated continued high levels of IUU fishing in the Convention Area.

8.4 The majority of Members of the Commission agreed that catches reported from Areas 51 and 57 were not credible and that the veracity of information reported in catch documents did not match available knowledge of toothfish distribution and potential biomass for waters outside the Convention Area in these two adjacent areas.

8.5 The Commission noted the Republic of Korea's concerns that the majority's view could discourage legitimate fishing operations on the high seas outside the Convention Area and noted Korea's advice that its vessels fishing for toothfish in Area 57 fully complied with all applicable CCAMLR measures, as well as mandatory implementation of Resolution 16/XIX.

8.6 Uruguay concurred with the concerns expressed by the Republic of Korea and further advised that it voluntarily implemented Resolutions 16/XIX and 17/XX. Automated VMS had operated until the position reports were submitted to the Uruguayan fisheries authorities. In addition, all Uruguayan-flagged vessels were subject to port inspection before and after fishing (CCAMLR-XXI/BG/12). National observers were on board Uruguayan vessels fishing in those areas (CCAMLR-XXI/BG/12).

8.7 During discussions, Russia disagreed with the seabed area estimate of 30 007 km^2 calculated for Area 51 in the fishable depth range of 600 to 1 800 m and within the likely geographic distribution of *D. eleginoides* (SC-CAMLR-XXI, Annex 5, Table 5.32). Based on available information of *D. eleginoides* distribution, which is different from assumptions made by the Scientific Committee (SC-CAMLR-XXI, Annex 5, Figure 5.7), Russia's area estimate for that depth range was more than 100 000 km^2.

8.8 Russia added that it would submit to the 2003 meeting of WG-FSA materials demonstrating that the area of toothfish distribution within the depth range from 500 to 2 000 m is much broader than that assessed by the Scientific Committee.

8.9 The Commission noted the uncertainties associated with assumptions underlying assessment of IUU fishing levels and that available IUU estimates were likely to be minimal estimates.

8.10 The Commission agreed that the proposed joint meeting of SCOI and WG-FSA experts would probably be the best forum to address these and also other issues of estimating IUU catches.

8.11 An informal discussion group (Convener – Mr E.S. Garrett, USA) met to address the formation of a Joint Assessment Group comprising members of both SCOI and the Scientific Committee. The discussion group considered the following two issues:

(i) improvement of the estimation of total removals of *Dissostichus* spp. from different locations, including estimates of IUU catches; and

(ii) a proposition for SCOI to develop a methodology for the compliance assessment of factual data collected by scientific observers on the implementation of Conservation Measure 25-02 (2002) (see paragraph 11.21).

8.12 In terms of assessing the total removals of toothfish, including an analysis of IUU fishing, it was noted that there were several components of the issue, the combination of which could lead to a 'double counting' of catches. The possible double counting of catches is a result of the different sources of data used by the Scientific Committee. The information is received in the traditional method as well as from the CDS data summaries provided by the Secretariat. A further difficulty with the information is the view that there is some misreporting of catch levels and statistical areas on the *Dissostichus* catch document (DCD) which further compounds the problem of double counting. In this regard, it was concluded that a Joint Assessment Group be formed and in the coming year:

(i) rely on data provided by the Secretariat on IUU activities collected from all sources;

(ii) establish an annual data submission cut-off date of 1 October each year with any data collected by the Secretariat after that date being incorporated into the following year's analysis;

(iii) forward the group's analysis to WG-FSA no later than the third day of its annual meeting; and

(iv) review and assess potential procedures for estimating IUU catches and total removals, including the types of data and analytical methods used in the procedures, such as that described in WG-FSA-02/4 'A Statistical Method for Analysing the Extent of IUU Fishing in CCAMLR Waters: Application to Subarea 48.3' (Drs D. Agnew and G. Kirkwood (UK)).

8.13 It was proposed that the Joint Assessment Group establish and develop a work plan, at least in part, through an informal electronic discussion group to be set up on the CCAMLR website. The Commission recognised that a meeting of the group may be needed in Hobart at a time appropriate for providing advice to WG-FSA and to SCIC. To assist in developing the work plan, Members were invited to provide examples of proposed methods and approaches on each of the two issues by 15 April 2003. The Joint Assessment Group could review these proposals and test those that might be appropriate for the assessments required. These tests could be undertaken on current and/or historical data in order that the outcomes of those tests, including examples of output and presentation of results, could be reviewed by SCIC and WG-FSA.

8.14 The Commission endorsed the proposal that the Joint Assessment Group should be convened by Mr Garrett. He was requested:

(i) to create, by correspondence with Members of SCIC and the Scientific Committee, an appropriate membership for this group;

(ii) to develop explicit terms of reference for the group and a work plan for the intersessional period; and

(iii) to prepare appropriate reports and data inputs, including those indicated in paragraphs 8.12 and 8.13, to next year's meetings of WG-FSA and SCIC.

The Commission agreed that an informal electronic discussion forum for members of the Joint Assessment Group should be established on the CCAMLR website.

8.15 The Commission agreed that a Plan of Action in support of the FAO's International Plan of Action on IUU fishing (IPOA-IUU) be developed. It requested the Secretariat to draft the plan taking into account CCAMLR measures in force and also to identify those elements of the FAO plan which had not yet been implemented by CCAMLR. The draft Plan of Action would be circulated intersessionally to Members for comment and later submitted for consideration at CCAMLR-XXII.

8.16 The Commission noted information considered by SCOI from Members' reports relating to activities in the Convention Area which affect the implementation of the objectives of the Convention as well as on compliance with conservation measures in force. Such information included reports on IUU fishing in the Convention Area.

8.17 The Commission noted that the information before it exposed the true extent and nature of IUU fishing activities and that the nationals and vessels of both Contracting and non-Contracting Parties were involved. Additional problems revealed concerned re-flagging and non-compliance with the requirements of VMS.

8.18 The Commission requested the Executive Secretary to write to the Netherlands with a request not to undermine the Convention by accepting applications for reflagging IUU vessels. The Executive Secretary was also requested to contact Belize to advise details of the investigations initiated by South Africa on the vessel *Noemi* and request Belize to order the vessel to remain in Durban until a full investigation of the vessel's activities is completed.

8.19 Russia advised that the licences for the *Lena* and *Volga* had been cancelled, although the *Lena* had been sold abroad before being apprehended by Australian authorities early in 2002. Russia indicated that it was taking a legal risk with its action against the owners given that there is still a court case under way regarding the apprehension of the *Volga*. Further, Russia stated that it did not support IUU fishing and questioned the accuracy of catch figures attributed to Russia by environmental groups recently. Russia felt that the Scientific Committee should look at establishing minimum allowable size limits given that toothfish reached sexual maturity at about 85 cm in length.

8.20 Australia thanked Russia for the information contained in CCAMLR-XXI/BG/22 and noted that the Russian VMS automatically monitored Russian vessels every hour. Australia asked Russia if it could provide Australia with the VMS data for the Russian-flagged vessels *Lena* and *Volga* for the period prior to their arrest by Australia. These data would show whether the Russian VMS positions were consistent with the sightings by France and Australia and this would assist Australia in its prosecution of the *Volga*.

8.21 South Africa stated the sequence of events regarding the vessel *Viola* was as follows (Annex 5, paragraphs 5.23 and 5.28): 'The *Viola* was flagged to Uruguay. It entered the dry dock in Cape Town in July 2002 after unloading its catch of toothfish into bond without the required catch document. On 21 August 2002, *Viola* de-registered from the Uruguayan vessel register and is currently flagless. For South Africa, the main issue of concern remains one of Flag State responsibility and control, not one of reflagging.'

8.22 The observer from the People's Republic of China advised that it had contacted the CCAMLR Secretariat with respect to a shipment accepted by China for processing and re-export from one of the vessels reported by Australia as engaged in IUU fishing (Annex 5, paragraphs 5.2 and 5.4). China had received confirmation that the catch document had been issued and certified by the Flag State of the vessel as required by the CDS.

8.23 New Zealand indicated that it was deeply disturbed by the seeming lack of control by some Members of the Commission over their flag vessels. New Zealand noted that SCOI had agreed (Annex 5, paragraph 5.32) that the nationals and vessels of both Contracting and non-Contracting Parties are involved in IUU fishing. As SCOI had expressed such serious concern about the activities of the vessels of a small minority of Members, New Zealand was strongly of the view that it would be inappropriate for the Commission to give any consideration to notifications for CCAMLR exploratory fisheries by the Members involved. New Zealand observed that some of these nominations involved the same vessels named by SCOI as being possibly involved in IUU fishing. New Zealand stated that allowing these

vessels to participate in CCAMLR fisheries would make the Commission the object of public derision.

8.24 France supported the proposal to assess total removals of toothfish, recalling that it views IUU fishing as a major issue. France repeatedly called the Commission to account last year and welcomed the fact that this issue is the main focus of the Commission's discussions this year. IUU fishing activities have again increased in the Kerguelen and Crozet areas (Area 58) in 2001/02, with close to 7 000 tonnes of toothfish fished illegally. Numerous IUU vessels flying various flags (Belize, Bolivia, Panama, Russia, Seychelles, Uruguay etc.) had been reported. It had been possible to identify five longliners: *Bonanza*, *Eva*, *Lena*, *Florence*, and a vessel showing the registration number ONWS and under Russian command. Others had been observed in the vicinity of Area 58, or sighted unloading toothfish during periods in which fishing is prohibited: *Vega*, *Boston*, *Castor*, *Rubin*, *Praslin*, *Lince*, *Arvisa*, *Viarsa 1*, *Bouzon* and *Viking*.

8.25 France also noted that in addition to the areas traditionally harvested for toothfish, even rarely harvested areas were now being targeted by IUU fishers. Moreover, IUU fishing was particularly significant during closed seasons. The assessment of total toothfish removals was therefore essential.

8.26 France also wondered, like New Zealand, whether licences for exploratory fishing should be granted to vessels implicated in IUU activities. France considered that if this were to take place, it would be detrimental to the credibility of the Commission.

8.27 France was aware that it was necessary to implement adversarial proceedings and to have conclusive evidence before implicating any Party or vessel. Nevertheless, the ultimate proof of guilt must be based on a set of factors, a series of indications which can throw light on the situation. France considered that a number of countries had brought to the discussion conclusive evidence which explicitly implicated certain parties or vessels as engaging in IUU fishing. Finally, it would be advisable not to hesitate in initiating a preliminary inquiry or investigative proceedings, whether administrative or judicial, whenever a vessel is under suspicion.

8.28 The European Community indicated that it shared the concerns expressed by New Zealand and by France and stated that vessels with a record of involvement in IUU fishing activities should not be authorised to participate in new or exploratory fisheries.

8.29 Australia supported the remarks of New Zealand, France and the European Community. Australia believed that not only should Members involved in IUU fishing be denied access to new and exploratory fisheries, they should also be denied access to the CDS.

Implementation of Other Measures to Eliminate IUU Fishing

Cooperation with non-Contracting Parties

8.30 The Commission noted the extensive work conducted by the Secretariat on cooperation with non-Contracting Parties.

8.31 The Commission welcomed the development of cooperation with a number of non-Contracting Parties and thanked them for supporting CCAMLR in its fight against IUU fishing.

8.32 Spain stated that during the past 2.5 years it had sent letters to IUU vessel Flag States at the highest level of authority and via Spanish embassies. Spain called on these countries to undertake actions based on the need to comply with their obligations under international law. This is the kind of diplomatic action that CCAMLR Members could produce to complement the Secretariat's work. Spain offered to circulate their standard letter as the information contained in it may be of interest.

8.33 The Commission requested the Executive Secretary to write to Indonesia with detailed information of Indonesia's responsibilities under the CDS as a Port and Export State. The Commission should also invite Indonesia to become a Party to CCAMLR and fully implement the CDS.

CCAMLR Vessel Database

8.34 The Commission noted the continued work of the Secretariat in developing the CCAMLR Vessel Database. It was also noted that in reference to a request to compile a list of 'flags of convenience' (CCAMLR-XX, paragraph 5.19), the Secretariat sought guidance on the definition of such flags.

8.35 Chile noted that it was important to continue to establish a list of 'flags of convenience' as previously requested by the Commission. Efforts should be made to list individual vessels implicated in IUU activities and, for this task, a precise definition of the term 'flag of convenience' was not indispensable. The UN Convention on the Law of the Sea (UNCLOS) defined 'flag of convenience' as one lacking a substantial link between the Flag State and a vessel flying its flag, but that a more practical definition (such as the one proposed by ASOC) would provide a procedure for determining which vessels should be included in such a list.

8.36 Russia agreed with the benefits of establishing such a list, but urged that caution be taken in respect of vessels with the same or similar names.

8.37 The Commission further noted that international maritime law did not precisely define 'flags of convenience'. Therefore, the Commission agreed that the Secretariat should continue to collect vessel details and information on vessel activities, including their history of IUU activities. Some attempt should be made to separate anecdotal from verifiable information.

8.38 The Commission endorsed the suggestion of Namibia that additional information on vessel owners, companies and their subsidiaries should also be collected.

8.39 Members were requested to assist the Secretariat in this task by providing, in particular, Lloyd's number and other vessel registration details, and also photographs of vessels licensed to fish both inside and outside the Convention Area.

8.40 Australia noted that the CCAMLR Vessel Database has become a valuable monitoring, control and surveillance (MCS) tool for CCAMLR Members. Australia named some additional vessels for inclusion in the database. These were: *Austin* (also known as *Austin-1*), *Boston*, *Champion*, *Darwin* (also known as *Darwin-1*), *Eva* (also known as *Neva* and *Eva-1*), *Florence* (also known as *Florens-1*), *Georgia*, *Hunter*, *Isabel*, *Jackson*, *Strela*, *Volna*, *Yantar* and *Zarya*. Australia requested that if Members had information on any of these vessels, this should be submitted to the Secretariat for inclusion in the vessel database.

8.41 As a follow-up of the landing of toothfish by the Belize-flagged vessel *Noemi* reported by Mozambique (Annex 5, paragraph 5.22), the European Community carried out an investigation and found that the vessel *Noemi* is a part of a fleet comprising three other fishing vessels, one tanker and a refrigerated cargo reefer owned and operated by a company named INFITCO Ltd: *Acros No.2* (Guinea), *Helecho* (Ghana), *Salvia-L* (Guinea) – fishing vessels; *Mencey* (Panama) – tanker and *Suam Reefer* (Ghana) (CCAMLR-XXI/BG/40).

8.42 The European Community requested that Members be requested to identify, verify and report any activities of this fleet and subsequently to advise the Flag States concerned in accordance with the provisions of Conservation Measure 10-07 (2002) (see paragraph 11.14).

Implementation of CDS-related Conservation Measures and Resolutions

8.43 The Commission noted that SCOI had considered a Secretariat report on the implementation by Members of CDS-related conservation measures and resolutions, including port inspections of vessels of non-Contracting Parties (Conservation Measures 118/XX and 147/XIX), actions taken with respect to the flagging of non-Contracting Party vessels (Resolution 13/XIX), use of ports not implementing the CDS (Resolution 15/XIX), the application of VMS in the CDS (Resolution 16/XIX) and the application of VMS and other measures to verify CDS catch data from high seas areas outside the Convention Area (Resolution 17/XX).

8.44 The Commission noted that, as requested at CCAMLR-XX, Uruguay and Russia reported on the verification of catches from the high seas outside the Convention Area (CCAMLR-XXI/BG/12 and BG/22 respectively).

8.45 Uruguay advised that the legal action over the sightings of the vessels *Kambott* and *Nova Tuna No. 1* (allegedly the *Arvisa I* and *Dorita* flagged to Uruguay) which were sighted in the CCAMLR Convention Area early in 2002 by the Australian research vessel *Aurora Australis* are still in progress. The competent legal services have been limited in the actions undertaken due to insufficient evidence regarding the provisions of domestic law. In particular, the statements of the *Aurora Australis* master and second mate do not provide any element that helps to prove the identity of the vessels. Uruguay's national legislation on the basis of principles, such as the presumption of innocence, establishes requirements that determine the need for the elaboration of sufficient proof to allow further actions to be taken.

8.46 Uruguay ratified that at present it has an operational new data processing system for vessel monitoring in accordance with information provided in CCAMLR-XXI/BG/12.

8.47 In response to Uruguay, Australia indicated that it had provided detailed evidence and information regarding the *Kambott* and *Nova Tuna No. 1* (*Arvisa I* and *Dorita*). Australia rejected the statement by Uruguay that it could not take action against these vessels because, in its view, the evidence provided by Australia was inadequate. Australia advised that it had provided significant information to Uruguay including a report of the incident, statutory statements from the captain and master of the *Aurora Australis* and photographic and auditory evidence. Australia further advised that it had also made significant efforts to inform the Commission of the issues by making a presentation to SCOI on the matter.

8.48 Australia referred to Uruguay's clarification in relation to its generation of VMS (CCAMLR-XXI/BG/12) and advised that, in Australia's view, and contrary to Uruguay's statement on this matter, Australia had direct confirmation that Uruguay has not fully implemented the 'Smart Track' system.

8.49 Australia and Uruguay have begun a constructive dialogue on the implementation by Uruguay of the 'Smart Track' VMS. Australia has offered to assist Uruguay in this regard.

8.50 Uruguay is grateful for the cooperation of Australia in relation to the qualification of the situation regarding Uruguay's VMS. The information exchanged allowed for the identification of assistance with commercial problems between the 'Smart Track' vendor in Uruguay and its owner.

8.51 The Commission requested all Members fishing for toothfish on the high seas outside the Convention Area to again submit reports next year on VMS and other catch verification procedures. In particular, the reports should include verification procedures, specifications of the VMS equipment installed on board vessels and details of software used to monitor the position and movement of vessels.

Additional Measures

8.52 The Commission considered a number of additional measures proposed by Australia and the European Community which are aimed at eradicating IUU fishing from the Convention Area (Annex 5, paragraphs 5.66, 5.68, 5.74 and 5.75).

8.53 The European Community presented proposed draft conservation measures and resolutions on IUU fishing. In addition, the European Community proposed a number of modifications to CCAMLR conservation measures in force. Finally, the European Community proposed to amend Conservation Measure 170/XX to incorporate stronger controls on landings, imports, exports and re-exports of toothfish, particularly those concerning catches made outside the Convention Area, along the lines of Resolution 17/XX.

8.54 A task group established at SCOI had initially considered these proposals and passed them on to the Commission for further consideration.

8.55 Australia presented a proposal for the establishment of a centralised or dual-reporting[1] VMS reporting system (CCAMLR-XXI/21). The proposal was initially discussed by SCOI (Annex 5, paragraphs 5.75 to 5.96). Under this proposal, the Flag State would require vessels

[1] A system which reports to both the Flag State and the Secretariat.

fishing for toothfish to transmit identification and position information directly to the CCAMLR Secretariat as well as to the Flag State.

8.56 The vast majority of Members supported the proposal that CCAMLR receive VMS data. Some Members supported the implementation of a dual-system VMS. Others were of the view that, if appropriate, relevant information deriving from the VMS should be submitted to CCAMLR via the fisheries monitoring centre of the vessel's Flag State (see also paragraph 3.31).

8.57 Japan was of the opinion that a cost-benefit analysis should be undertaken before the implementation of such a system. Japan also warned of the dangers of the possible disclosure of vessel position information which would be of great value to IUU vessels. Japan believed that, prior to implementation, the scheme would require strict control by the Secretariat and clear rules as to the handling of confidential position data. Japan also believed that compensation may need to be made to legal operators and that Flag States should have the option of suspending VMS reports in the event that position data were disclosed.

8.58 The Commission discussed and further elaborated several proposals for new measures and the revision of current measures aimed at the elimination of IUU fishing in the Convention Area.

8.59 The Commission adopted a set of revised and new conservation measures and resolutions related to the implementation of the CDS (paragraphs 11.13 to 11.20 and 11.28 to 11.35), the use of VMS, compliance by Contracting and non-Contracting party vessels with CCAMLR measures, port inspections of vessels carrying toothfish, and harvesting of toothfish outside the Convention Area in Areas 51 and 57 (see paragraphs 11.4 and 11.75).

Changes to the US Import/Export Control Program

8.60 The USA made the following statement on recent proposed changes to its domestic Import/Export Control Program for Toothfish:

> 'As we all are, the USA continues to be concerned about the stresses to the toothfish stock in some areas due to the apparent fraudulent actions of some fishers and traders.
>
> While some very good "first steps" have been implemented through CCAMLR by Members and other States which voluntarily subscribe to the CDS, further substantial improvements can be made. The current system still allows too much IUU fishing and subsequent fraudulent marketing of such catches under the cover of fraudulent DCDs.
>
> Thus, based on trade data, the USA experience with questionable DCDs, the increasing seizure of vessels illegally fishing in the Convention Area, and the strong advice of the Scientific Committee this year and last, the USA is proposing some fundamental changes to our toothfish Import/Export Control Program.
>
> First, as a condition of possessing a USA dealer permit, dealers would be required to designate and maintain a registered agent in the United States authorised to accept legal service of process on behalf of that entity. Requiring a registered agent will

facilitate enforcement by ensuring jurisdiction over a foreign importer should an enforcement action become necessary.

Second, we have discussed with our industry the use of a pre-approval system applicable to all shipments of frozen toothfish and those shipments of fresh toothfish over 2 000 kg. The pre-approval system would be operated on a fee-for-service basis and would allow the National Marine Fisheries Service (NMFS) to review catch documents in advance of import. At least 15 days prior to an expected import, a dealer permit holder seeking to import *Dissostichus* will be required to submit the DCD that will accompany an anticipated shipment and an application requesting pre-approval of the shipment.

Under the new system the NMFS will review the documents, notify the dealer as to whether the import would be allowed or denied, further notify the US Customs Service to allow or deny import of the shipment, and bill the client for the review of the catch documentation and pre-approval application. Pre-approval will enhance economic certainty for US businesses and facilitate our enforcement efforts.

Finally, the USA would prohibit the import of any toothfish identified on a DCD as having been harvested from FAO Areas 51 or 57. This ban could take effect as early as late December 2002 and would continue until such time as fisheries-independent stock assessments confirm the presence of toothfish at significant population levels in those areas. The implausibility of any significant level of high seas catches of toothfish is illustrated by findings of WG-FSA and the Scientific Committee with respect to high seas catches attributed to FAO Areas 51 and 57.

VMS might also become a viable alternative to a ban on the import of toothfish from high seas Areas 51 and 57 if CCAMLR amended its VMS and CDS measures to improve the reliability and integrity of VMS use inside the Convention Area and in adjoining areas. This would require Member consensus that CCAMLR: (i) direct its Secretariat to monitor the type, installation and operation of VMS and require all Member vessels in the Convention Area to use VMS and report data directly to the Secretariat; and (ii) expand the use of VMS verification by requiring its use in high seas areas adjacent to the Convention Area and by allowing non-Contracting cooperating Parties participating in the CDS to submit VMS data directly to the CCAMLR Secretariat.

In summary, we do not want our reputation tarnished as an importing State, nor do we want the resource to be further stressed by the fraudulent actions of others. Therefore, we are proposing significant changes to our Import/Export Control Program, that will result not only in the facilitation of the import of toothfish into the USA, but also sharply reduce the opportunity for our country to be presented with fraudulent documents.'

8.61 Members of the Commission noted that they would draw the attention of their national customs authorities and the fishing industry to the abovementioned proposed changes to the US Import/Export Control Program.

Amendment of Article 73(2) UNCLOS

8.62 Australia submitted a proposal (CCAMLR-XXI/23) to amend the application of Article 73(2) of UNCLOS, so that it does not apply to vessels or support craft apprehended for IUU fishing within the Convention Area, thereby preventing such vessels from resuming fishing activities after forfeiture of a posted bond.

8.63 The Commission noted that any amendment to UNCLOS would be a lengthy and complex procedure and urged caution in this regard.

8.64 The UK made the following statement:

> 'We sympathise with the sentiments expressed by Australia in its paper. The UK has also had experience of an arrested vessel doing no more than paying its bond, then escaping paying the fine and returning to sea and to IUU fishing. Given the enormous amount of work and the cost of enforcement action, it is disappointing when this occurs.
>
> However, we are rather doubtful that this proposal is the way to cure the problem. It is true that Article 311(3) of UNCLOS permits States to agree to suspend the operation of a provision of the Convention, provided that derogation from those provisions would be compatible with the effective execution of the object and purpose of the Convention. UNCLOS strikes a very careful balance between the rights of Coastal States and the rights of fishing States, and Article 73(2) is part of that balance. We are therefore concerned that derogation might not be compatible with achieving the object and purpose of the Convention. We also think it may send the wrong message as to our faith in the International Tribunal for the Law of the Sea (ITLOS), an institution set up by UNCLOS. If States think ITLOS is taking the wrong approach, the correct place to raise that issue is within the tribunal.
>
> Apart from the legal position, we need consider very carefully whether waiver of rights under Article 73(2) would achieve the aim of reducing IUU fishing. If a vessel is not to be released on payment of a bond, it means that it will remain in port until such time as an appropriate tribunal has determined whether there has been a breach of the Coastal State's laws and regulations and imposed a penalty. If a tribunal eventually determines that a vessel is not guilty of IUU fishing, that vessel will be entitled to compensation – and if it has remained in port for some time, that compensation will be substantial. We wonder if the risk of having to pay such compensation might deter Port States from arresting vessels in the first place.
>
> So, while we sympathise with the Australian concerns, we would very much urge caution before going down this very sweeping route.'

8.65 Chile endorsed the UK's thoughtful reflection on the merits and risks entailed by Australia's proposal to modify through a regional measure the requirements of Article 73(2) of UNCLOS. Chile pointed out that applying Article 73(2) of UNCLOS is an extreme recourse and would only be viable if the implied derogation of rights did not alter a balance which is in the core of the legal and political understandings underlying UNCLOS. Chile suggested, however, that other possibilities of collective action might be considered in line with the CCAMLR System of Inspection. These would direct the Flag State to prevent its

vessels from continuing to fish, if sanctioned for contravening the Convention. Otherwise, if the ITLOS decisions continued to constitute a cause for concern, the matter could be raised in other forums such as the UN Oceans Consultation, UNCLOS Parties Meeting or as intervening States at ITLOS proceedings.

8.66 Norway also expressed sympathy with Australia's concerns and agreed that Article 73(2) of UNCLOS should have been stricter but is part of a broader balance. Norway observed that, whilst the amendment would only apply to inside the Convention Area, it does not support a piecemeal approach. In any case, Norway asserted that amendment to UNCLOS is extremely complicated and the implications of amending it would require further study. Therefore, Norway could not support the proposal as presented.

8.67 Sweden commented that:

> 'UNCLOS is a package deal. An essential part of that package is the balance of interests between the rights of Coastal States and the rights of Flag States. One of the most important examples of how UNCLOS tackles this balance is found in Article 73(2) (enforcement of laws and regulations of the Coastal State) when read in conjunction with Article 292 (relating to the prompt release of vessels). Any modification of the relation between these two articles would risk altering the balance between the rights of the Coastal State and the rights of the Flag State. While the Coastal State's interest is taken care of in Article 73, the rights of the Flag State is guarded by Article 292 and the regulation on prompt release of vessels.
>
> The importance of this balance was furthermore underlined by the fact that this was the only situation in which States party to UNCLOS were subject to an automatic and compulsory jurisdiction of ITLOS.
>
> While it is true that States may, *inter partes*, modify or suspend the provisions of UNCLOS, Article 311(3) contains an important qualification. It provides that such modification may only be made if it does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of UNCLOS and does not affect the application of the basic principles embodied in UNCLOS.
>
> It seems therefore reasonable to argue that any modification of the balance of interest as provided for in Article 73, and read in conjunction with Article 292, would be incompatible with the effective execution of the object and purpose of UNCLOS. We must not attempt to alter the balance of interests in UNCLOS by trying to get around it in a way that would be contrary to the basic principles and purposes of the Convention.
>
> Any such modification must be notified to other State parties through the depositary according to Article 311(4). Hence, it is likely to be subject to protest and objections by other State parties to UNCLOS.
>
> ITLOS has just begun its work, but it has dealt with several cases concerning prompt release of vessels. If there is a legal development within the praxis of the Tribunal in respect of what is to be considered as a "reasonable bond", and which praxis is considered to be detrimental to efforts to combat illegal fishing, this is something that

has to be dealt with in the context of ITLOS' own jurisprudence. It is the view of Sweden that it is important to have confidence in the UNCLOS system and in the work of the Tribunal.

It should also be noted that a modification of UNCLOS as proposed by Australia would only address illegal fishing, since it is that type of fishing that takes place in the EEZ of a State. Unregulated and unreported fishing on the high seas cannot be addressed by modifying Article 73(2).'

8.68 South Africa shared the reservations of the UK and Norway and pointed out that South African legislation already takes UNCLOS Article 311 into account. South Africa suggested that Australia consider amending its own national legislation accordingly.

8.69 The European Community acknowledged the merits of the proposal but concurred with the sentiments expressed by Chile. The European Community would have difficulty in supporting the proposal and urged extreme caution in this respect.

8.70 Argentina understood the concerns of Australia but shared Norway's view that more time was required in order to study the issue. Argentina noted that, over the years, it had drawn the Commission's attention to the need to seek awareness of the balance of interests provided by UNCLOS provisions and not to divert from them. Argentina, therefore, urged the utmost caution. Argentina highly appreciated Sweden's comments.

8.71 France stated that it fully understood Australia's motivation but that the proposal may be disproportionate in relation to the problem. To revise UNCLOS would be a very significant task and consideration should instead be given to the suggestions of Chile for Flag State intervention. France noted that procedures involved in submitting an amendment to UNCLOS might involve the entire Commission having to appear before the tribunal in Hamburg, Germany.

8.72 Other Members endorsed the views of the UK and Sweden.

8.73 Australia thanked Members for their views and advised that it would reconsider its proposal with a view to revisiting the issue in future.

Amendment to Article I of the Convention

8.74 Australia presented a proposal to amend Article I, in accordance with Article XXX, of the Convention, to extend CCAMLR's competency for management of the harvesting of *Dissostichus* spp. outside the Convention Area by extending the boundaries of the Convention Area to include William's Ridge, Marion Rise and Del Cano/Africana Rise (Areas 51 and 57) (CCAMLR-XXI/24).

8.75 Russia stated that it was unable to see how CCAMLR can move in this way. The boundary of geographical distribution of *D. eleginoides* in the Indian Ocean was still an open question and needed further consideration (paragraph 8.2).

8.76 Norway reminded the Commission of the negotiation of the Southern Indian Ocean Fisheries Commission (SIOFC) and noted that this RFMO, once established, will have

competence for FAO Areas 51 and 57. *Dissostichus* spp. would thus become a straddling stock and CCAMLR should consider cooperation with this organisation.

8.77 The European Community expressed its concerns with the Australian proposal as it would involve amending the Convention. The European Community also advised that negotiations on SIOFC were only at the stage of drafting the Convention. The next meeting on SIOFC will be in March 2003 and it was possible that a final agreement would be reached then. However, in terms of timing, the establishment of this organisation was still uncertain.

8.78 Spain reminded the Commission that UNCLOS contains provisions on cooperation between Coastal States and international organisations on matters associated with fishing on the high seas.

8.79 Sweden commented that:

> 'A modification of CCAMLR's geographical area of application is legally possible but would be a lengthy process. A diplomatic conference has to be called in accordance with Article XXX. All States which are Members of the Commission will have to approve it before the modification can enter into force. Then there is the next step during which all other Contracting Parties have to ratify, accept or approve the amendment. If a Contracting Party does not ratify, accept or approve the amendment, there is an automatic process by which such a State is deemed to have withdrawn from the entire Convention. Hence, by embarking on such an amendment procedure there is a great risk that we will "lose" States that are Contracting Parties to the Convention. This is the primary reason why Sweden is not convinced that the Australian proposal is the best way to tackle the problem.
>
> However, the ideas presented by the Australian delegate regarding cooperation according to UNCLOS 117–119, are interesting and we would like to hear more about them. Sweden asked if Australia could provide any written documents reflecting the ideas. The Swedish delegate stated that Articles 117–119 of UNCLOS clearly place an obligation on States to adopt with respect to their nationals measures for the conservation of living resources of the high seas and likewise place a duty on States to cooperate in this regard. '

8.80 Chile agreed with the position of Spain and Sweden and noted that Article 8 of the UN Fish Stocks Agreement (UNFSA) provided a conceptual framework for States which exploit stocks on the high seas.

8.81 Argentina noted that not all States fishing for toothfish outside the Convention Area are Parties to the UNFSA or relevant RFMOs. With regard to the role of RFMOs, Argentina pointed out that cooperation in fishing the same stocks in the high seas can also be conducted by other instruments.

8.82 Japan, whilst sharing the deep concern expressed by Australia on the problems of IUU fishing, believed that this could be resolved through the adoption of other measures. Japan is of the view that the amendment of an Article of the Convention would be a lengthy one and it may also impact on other RFMOs.

8.83 Australia acknowledged the difficulties inherent in amending the Convention and advised that it would circulate an amended draft conservation measure as outlined in CCAMLR-XXI/24, Attachment B.

8.84 The Commission welcomed this intention but expressed concerns that due to insufficient time at the current meeting, consideration of the amended proposal should be postponed until CCAMLR-XXII.