

CONSERVATION MEASURES

13.1 Conservation measures adopted at CCAMLR-XXVII will be published in the *Schedule of Conservation Measures in Force 2008/09*.

Review of existing conservation measures and resolutions

13.2 The Commission noted that the following conservation measures will lapse on 30 November 2008: 32-09 (2007), 33-02 (2007), 33-03 (2007), 41-01 (2007), 41-03 (2006), 41-04 (2007), 41-05 (2007), 41-06 (2007), 41-07 (2007), 41-09 (2007), 41-10 (2007), 41-11 (2007), 42-02 (2007), 52-01 (2007), 52-02 (2007) and 61-01 (2007). The Commission also noted that Conservation Measure 42-01 (2007) will lapse on 14 November 2008. All of these measures dealt with fishery-related matters for the 2007/08 season.

13.3 The Commission agreed that the following conservation measures² will remain in force in 2008/09:

Compliance

10-01 (1998), 10-04 (2007) and 10-08 (2006).

General fishery matters

21-02 (2006), 22-01 (1986), 22-02 (1984), 22-03 (1990), 22-04 (2006), 23-01 (2005), 23-02 (1993), 23-03 (1991), 23-04 (2000), 23-05 (2000), 23-06 (2007) and 25-03 (2003).

Fishery regulations

31-01 (1986), 31-02 (2007), 32-01 (2001), 32-02 (1998), 32-03 (1998), 32-04 (1986), 32-05 (1986), 32-06 (1985), 32-07 (1999), 32-08 (1997), 32-10 (2002), 32-11 (2002), 32-12 (1998), 32-13 (2003), 32-14 (2003), 32-15 (2003), 32-16 (2003), 32-17 (2003), 32-18 (2006) and 33-01 (1995).

Protected areas

91-01 (2004) and 91-02 (2004).

13.4 The Commission agreed that Conservation Measure 52-02 (2007) be subsumed as Annex 52-01/C (see paragraph 13.60).

13.5 The Commission agreed that the following resolutions will remain in force in 2008/09: 7/IX, 10/XII, 14/XIX, 15/XXII, 16/XIX, 17/XX, 18/XXI, 19/XXI, 20/XXII, 21/XXIII, 22/XXV, 23/XXIII, 25/XXV and 26/XXVI.

² Reservations to these measures are given in the *Schedule of Conservation Measures in Force in 2008/09*.

Revised conservation measures

13.6 The Commission revised the following conservation measures²:

Compliance

10-02 (2007), 10-03 (2005), 10-05 (2006), 10-06 (2006) and 10-07 (2006).

General fishery matters

21-01 (2006), 21-03 (2007), 22-05 (2006), 22-06 (2007), 24-01 (2005), 24-02 (2005), 25-02 (2007) and 26-01 (2006).

Fishery regulations

41-02 (2007), 41-08 (2007), 51-01 (2007), 51-02 (2006) and 51-03 (2007).

Compliance

Catch Documentation Scheme

13.7 The Commission endorsed SCIC's recommendation to amend Conservation Measure 10-05 (Catch Documentation Scheme for *Dissostichus* spp.) so as to link the CDS Fund and the Policy to Enhance Cooperation between CCAMLR and non-Contracting Parties (Annex 5, paragraphs 2.43(i) and 2.46). The Commission hoped that this link would assist and encourage those Members wishing to help non-Contracting Parties, in particular developing States, to prevent, deter and eliminate IUU fishing in the Convention Area. The Commission also adopted a proposal to amend catch and export documents by splitting the original catch and export documents into two sections so that information regarding the total harvest is not made available to all buyers (Annex 5, paragraphs 2.43(i) and 2.46). The revised Conservation Measure 10-05 (2008) was adopted.

General improvements to conservation measures

13.8 The Commission endorsed SCIC's recommendations on general improvements to Conservation Measures 10-02 (Licensing and inspecting obligations of Contracting Parties with regard to their flag vessels operating in the Convention Area), 10-03 (Port inspections of vessels carrying toothfish), 10-06 (Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures) and 10-07 (Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures) (Annex 5, paragraphs 2.43(ii) and 2.46(iv)). The amendment to Conservation Measure 10-02 required that high-quality colour vessel photographs be submitted as part of the licence notification. Conservation Measure 10-03 was amended to provide a definition of 'fishing vessel' which would include any vessel used for the commercial exploitation of marine living resources including mother ships and supply vessels. Conservation Measures 10-06 and 10-07 were amended in order that subsequently reported incidents of IUU activity be included on the published IUU Vessel List, in addition to the incident for which the vessel was listed. Accordingly, the revised Conservation Measures 10-02 (2008), 10-03 (2008), 10-06 (2008) and 10-07 (2008) were adopted.

General fishery matters

Notification of intent to participate in a new fishery

13.9 The Commission considered a proposal to combine the notification procedures for new and exploratory fisheries (paragraph 12.40). However, the Commission was unable to reach agreement on this proposal. During further discussion, the Commission agreed to add the requirements from Conservation Measure 21-02 for a Fishery Operations Plan and a Data Collection Plan in the notification procedure for new fisheries (Conservation Measure 21-01). With these additions, the revised Conservation Measure 21-01 (2008) was adopted.

Notification of intent to participate in a krill fishery

13.10 The Commission revised Conservation Measure 21-03 (Notification of intent to participate in a fishery for *Euphausia superba*) to confine the notification procedure to Members only, and to include more details in the notification form (Annexes 21-03/A and B) for WG-EMM to review and give further advice if necessary. The Commission also amended the deadline for notifications to fish for krill under exploratory fisheries to 1 June (see Conservation Measure 21-03, footnote 1). This would allow WG-EMM to consider all notifications for krill fisheries. The revised Conservation Measure 21-03 (2008) was adopted.

Bottom fishing in CCAMLR high-seas areas

13.11 The Commission revised and adopted Conservation Measure 22-05 (Restrictions on the use of bottom trawling gear in the high-seas areas of the Convention Area) in accordance with the advice of the Scientific Committee (SC-CAMLR-XXVII, paragraph 4.284).

13.12 The Commission revised Conservation Measure 22-06 (Bottom fishing in the Convention Area). The area of application of this measure was extended to the area of Division 58.4.1, north of 60°S. In addition, a pro forma was developed to assist Members in developing preliminary assessments of known and anticipated impacts of bottom fishing activities on VMEs, and a notification form was included. The revised Conservation Measure 22-06 (2008) was adopted.

Scientific research exemption

13.13 The Commission revised Conservation Measure 24-01 (Application of conservation measures to scientific research) to ensure that it is consistent with its intended purpose (CCAMLR-XXVII/34). The Commission agreed that all notifications which propose taking more than 5 tonnes of *Dissostichus* spp. should be required to forward the related research proposals to WG-FSA for review. The revised Conservation Measure 24-01 (2008) was adopted.

Mitigation measures

13.14 The Commission endorsed the Scientific Committee's recommendation to amend Conservation Measure 24-02 (Longline weighting for seabird conservation) in order to align the seabird by-catch mitigation requirements for Subarea 48.4 with the IMAF risk assessment. In addition, the longline sink rate protocols were revised to include the trotline method of longlining, and to include a provision to measure sink rate in the Convention Area, using unbaited hooks, before commencing fishing (SC-CAMLR-XXVII, paragraph 5.34). The revised Conservation Measure 24-02 (2008) was adopted.

13.15 In addition, the Commission revised Conservation Measure 25-02 (Minimisation of the incidental mortality of seabirds in the course of longline fishing) to include line-weighting specifications for vessels using the trotline method of longlining (SC-CAMLR-XXVII, paragraph 5.27). The revised Conservation Measure 25-02 (2008) was adopted.

General environmental protection

13.16 The Commission amended Conservation Measure 26-01 (General environmental protection during fishing) to ensure all plastic packaging bands are cut into small sections prior to incineration (SC-CAMLR-XXVII, paragraph 5.40). The revised Conservation Measure 26-01 (2008) was adopted.

Toothfish

13.17 The Commission noted that no new assessment was required for *D. eleginoides* in Subarea 48.3 in 2008 (paragraphs 4.39 and 4.41). As agreed in 2007, the Commission carried forward its advice on this fishery (CCAMLR-XXVI, paragraph 13.54). The Commission also endorsed the Scientific Committee's general advice to discontinue the allocation of a 10-tonne limit for research fishing in fisheries for *Dissostichus* spp. (e.g. SC-CAMLR-XXVII, Annex 5, paragraph 5.34). Accordingly, the research fishing provision was removed, and the revised Conservation Measure 41-02 (2008) was adopted.

13.18 The Commission also noted that no new assessment was required for *D. eleginoides* in Division 58.5.2 in 2008 (paragraphs 4.39 and 4.41). As agreed in 2007, the Commission carried forward its advice on this fishery (CCAMLR-XXVI, paragraph 13.63). In light of the revision to Conservation Measure 24-02 (paragraph 13.14), Conservation Measure 41-08 was revised to include the provision to measure sink rate in the Convention Area, using unbaited hooks, before commencing fishing. The revised Conservation Measure 41-08 (2008) was adopted.

Krill

13.19 The Commission agreed to apply the general mitigation measures contained in Conservation Measure 25-03 as well as introduce the mandatory use of marine mammal exclusion devices on trawls in the krill fisheries in Subareas 48.1, 48.2, 48.3 and 48.4

(Conservation Measure 51-01) and Divisions 58.4.1 (Conservation Measure 51-02) and 58.4.2 (Conservation Measure 51-03). The Commission also agreed to limit these fisheries to vessels using fishing techniques listed in Annex A of Conservation Measure 21-03. Accordingly, the revised Conservation Measures 51-01 (2008), 51-02 (2008) and 51-03 (2008) were adopted.

13.20 The Commission also considered requirements for scientific observers in these fisheries (section 11). While not being able to reach consensus on this matter, the Commission noted that many Members participating in the krill fishery in Subareas 48.1, 48.2, 48.3 and 48.4 will deploy either CCAMLR scientific observers or government-appointed scientific observers in 2008/09.

13.21 Japan advised that government-appointed scientific observers would provide approximately 30% coverage on its krill fishing vessels in 2008/09, and expected that the coverage would reach 50% in 2010.

New conservation measures

Compliance

Transshipments

13.22 The Commission adopted a new measure to require Members to notify the Secretariat of intended transshipments within the Convention Area at least 72 hours in advance. This new measure applies to new and exploratory fisheries, as well as the fisheries for *D. eleginoides* in Division 58.5.2 and Subarea 48.3, *Dissostichus* spp. in Subarea 48.4, *C. gunnari* in Division 58.5.2 and Subarea 48.3, and crab in Subarea 48.4. Notifications of transshipment will require information on carrier vessels and products transhipped and will be made available to Members via a password-protected section of the CCAMLR website (Annex 5, paragraph 2.43(iv)). The Commission adopted Conservation Measure 10-09 (2008) (Notification system for transshipments within the Convention Area).

Encounters with VMEs during the course of bottom fishing

13.23 The Commission endorsed a precautionary approach for managing bottom fisheries with respect to VMEs, and implemented an interim measure to acquire additional data from fishing vessels in 2008/09 to contribute to assessments and advice on a long-term precautionary approach to avoiding significant adverse impacts on VMEs during the course of fishing. Accordingly, the Commission adopted Conservation Measure 22-07 (2008) (Interim measure for bottom fishing activities subject to Conservation Measure 22-06 encountering potential Vulnerable Marine Ecosystems in the Convention Area).

13.24 The Commission noted that the requirements in this new conservation measure, and general requirement in Conservation Measure 22-06, applied to the exploratory fisheries for *Dissostichus* spp. (Conservation Measures 41-04, 41-05, 41-06, 41-07, 41-09, 41-10 and 41-11), as well as the exploratory fishery for crab in Subarea 48.2 (Conservation

Measure 52-02). In addition to these requirements, the Commission agreed to extend its protection of benthic communities by extending the prohibition of longline fishing in depths shallower than 550 m across all exploratory fisheries.

13.25 In adopting Conservation Measure 22-07, the Commission tasked the Secretariat, prior to the start of the 2008/09 season, to:

- (i) extend the fine-scale catch and effort data forms and related instructions in order to assist vessels in reporting data on VME encounters, in accordance with the advice of the Scientific Committee (SC-CAMLR-XXVII, paragraphs 4.254 to 4.260);
- (ii) develop data forms and related instructions in order to assist scientific observers in acquiring data on VME-related taxa (SC-CAMLR-XXVII, paragraphs 4.261 and 4.272).

13.26 The Commission agreed that the benthic taxa represented in the New Zealand poster (WG-FSA-08/19) would form the basis for identifying VME-related taxa in 2008/09 (SC-CAMLR-XXVII, paragraph 4.254). The Commission requested that the Secretariat work with New Zealand scientists to finalise the poster, prior to the start of the 2008/09 season, and make this poster widely available, in electronic format, to Members and technical coordinators.

General fishery matters

Fishing seasons, closed areas and prohibition of fishing

13.27 The Commission agreed to renew the prohibition of directed fishing for *Dissostichus* spp. except in accordance with specific conservation measures. Accordingly, directed fishing for *Dissostichus* spp. in Subarea 48.5 was prohibited in the 2008/09 season. Conservation Measure 32-09 (2008) was adopted.

Year-of-the-Skate

13.28 In accordance with paragraph 4.55, the Commission agreed that vessels participating in the exploratory fisheries for *Dissostichus* spp. should tag skates at a rate of one skate per five skates caught, up to a maximum of 500 skates per vessel. This requirement was included in all conservation measures for exploratory fisheries on *Dissostichus* spp.

By-catch limits

13.29 The Commission agreed to apply the existing by-catch limits in Division 58.5.2 in the 2008/09 season. Accordingly, Conservation Measure 33-02 (2008) was adopted.

13.30 The Commission agreed to carry forward the by-catch limits for exploratory fisheries, taking account of the revised catch limit for *Dissostichus* spp. in Subarea 58.4 and the

consequential changes to by-catch limits in those areas, and the decoupling of the macrourid by-catch limit from the toothfish catch limit in Subarea 88.1 (paragraph 12.24). Conservation Measure 33-03 (2008) was adopted.

Toothfish

13.31 The Commission established a new SSRU in Subarea 88.1 (paragraph 12.24) and new SSRUs in Division 58.4.3b (see Conservation Measure 41-01, Table 1 and Figure 1).

13.32 The Commission revised the requirements for research hauls in Subareas 48.6 and 58.4, and included guidelines for tagging skates during the Year-of-the-Skate (paragraphs 12.9 and 4.55 respectively). Conservation Measure 41-01 (2008) was adopted.

13.33 The Commission requested the Secretariat to generate a list of random stations for each vessel participating in exploratory fisheries, and forward this list to notifying Members prior to the start of the 2008/09 season (SC-CAMLR-XXVII, paragraphs 4.113 and 4.114).

13.34 The Commission endorsed the Scientific Committee's advice for extending the fishery for *D. eleginoides* in the Northern Area of Subarea 48.4 into 2008/09, and the implementation of a fishery for *Dissostichus* spp. in the Southern Area of that subarea (paragraph 4.48). Accordingly, Conservation Measure 41-03 (2008) was adopted.

13.35 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Subarea 48.6 in 2008/09 would be limited to Japanese and Korean flagged vessels using longlines only, and that no more than one vessel per country shall fish at any one time. The Commission agreed to increase the tagging rate for *Dissostichus* spp. to three fish per tonne of green weight caught (paragraph 12.9(ii)). Other elements regulating this fishery were carried forward and Conservation Measure 41-04 (2008) was adopted.

13.36 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Division 58.4.1 in 2008/09 would be limited to one (1) Japanese, five (5) Korean, four (4) New Zealand, one (1) South African, one (1) Spanish and one (1) Uruguayan flagged vessels using longlines only. The Commission recalled that the Scientific Committee had not been able to provide consensus advice on revised catch limits for this fishery (paragraph 12.10(ii)) and that WG-SAM had been tasked with providing in 2009 clear advice on the practicability of continuing the experiment with closed SSRUs in Divisions 58.4.1 and 58.4.2. Noting the best scientific advice provided by the Scientific Committee (paragraph 12.10), the Commission agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 210 tonnes, applied as follows:

SSRUs A, B, D, F, H:	0 tonnes
SSRU C:	100 tonnes
SSRU E:	50 tonnes
SSRU G:	60 tonnes.

13.37 The Commission also removed the research fishing provision (see paragraph 13.13). Other elements regulating this fishery were carried forward and Conservation Measure 41-11 (2008) was adopted.

13.38 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Division 58.4.2 in 2008/09 would be limited to one (1) Japanese, four (4) Korean, one (1) Spanish and one (1) Uruguayan flagged vessels using longlines only³. As for the fishery in Division 58.4.1, the Commission noted the best scientific advice provided by the Scientific Committee (paragraph 12.10(iii)), and agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 70 tonnes, applied as follows:

SSRUs B, C, D:	0 tonnes
SSRU A:	30 tonnes
SSRU E:	40 tonnes.

13.39 Other elements regulating this fishery were carried forward and Conservation Measure 41-05 (2008) was adopted.

13.40 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Division 58.4.3a in 2008/09 would be limited to one (1) Japanese flagged vessel using longlines only. The Commission also agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 86 tonnes (paragraph 12.10(iv)). Other elements regulating this fishery were carried forward and Conservation Measure 41-06 (2008) was adopted.

13.41 Australia reiterated that the catch rates of *Dissostichus* spp. were very low during the survey conducted in 2008 on BANZARE Bank (Division 58.4.3b), consistent with toothfish being depleted in the surveyed area (SC-CAMLR-XXVII, paragraph 4.145). Furthermore, the fish caught during the survey were nearly all very large spawning fish (SC-CAMLR-XXVII, paragraph 4.146). As these fish constitute the only records of actively spawning *D. mawsoni* in the southern Indian Ocean sector of the Convention Area, protection of the population in this division was likely to be critical to ensuring the sustainability of *D. mawsoni* in this region. Australia further reminded the Commission that BANZARE Bank had been a focus for IUU activity in recent years, however, the numbers of IUU vessels sighted in the area in 2007/08 had declined dramatically, indicating that even IUU vessel operators considered the stock across this division is in a severely depleted state. Hence it is imperative that CCAMLR protect this stock by closing the entire area.

13.42 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Division 58.4.3b outside areas of national jurisdiction in 2008/09 would be limited to Japanese, Spanish and Uruguayan flagged vessels using longlines only, and that no more than one vessel per country would fish at any one time. The Commission noted that the Scientific Committee was unable to agree on management advice for this division (SC-CAMLR-XXVII, paragraphs 4.145 to 4.149). The Commission agreed that the catch limit in SSRU B should remain at zero. Further, and to ensure that data are collected in 2008/09 to assist with assessing this stock, and to avoid concentrated fishing that may lead to depletion, the Commission agreed that SSRU A should be further subdivided into four new SSRUs (see Conservation Measure 41-01, Table 1 and Figure 1). The Commission agreed to reduce the precautionary catch limit for *Dissostichus* spp. to 120 tonnes, applied as follows:

³ Australia and New Zealand withdrew their notifications at the time of adoption of the report.

SSRU A: 30 tonnes
 SSRU B: 0 tonnes
 SSRU C: 30 tonnes
 SSRU D: 30 tonnes
 SSRU E: 30 tonnes.

13.43 Other elements regulating this fishery were carried forward and Conservation Measure 41-07 (2008) was adopted.

13.44 The Commission noted that no new assessment was required for *Dissostichus* spp. in Subareas 88.1 and 88.2 SSRUs in 2008 (paragraphs 4.39 and 4.41). As agreed in 2007, the Commission carried forward its advice on this fishery (CCAMLR-XXVI, paragraph 13.65). However, following new advice from the Scientific Committee (paragraph 12.24), the Commission agreed to revise the proportional allocation of catch limits in the SSRUs following the establishment of a new SSRU M, and the combining of catch limits in SSRUs J and L. In addition, the by-catch limits for *Macrourus* spp. were revised, and the research fishing provision was removed (see paragraph 13.17).

13.45 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Subarea 88.1 in 2008/09 would be limited to two (2) Argentine, one (1) Chilean, four (4) Korean, four (4) New Zealand, three (3) Russian, one (1) South African, one (1) Spanish, three (3) UK and two (2) Uruguayan flagged vessels using longlines only.

13.46 The Commission retained the catch limit for *Dissostichus* spp. in Subarea 88.1 (2 700 tonnes, CCAMLR-XXVI, paragraph 13.65), and re-allocated the catch limits in SSRUs as follows:

SSRU A: 0 tonnes
 SSRUs B, C, G (northern): total of 352 tonnes
 SSRU D: 0 tonnes
 SSRU E: 0 tonnes
 SSRU F: 0 tonnes
 SSRUs H, I, K (slope): total of 1 994 tonnes
 SSRUs J, L: 354 tonnes
 SSRU M: 0 tonnes.

13.47 The Commission set a precautionary catch limit of 135 tonnes for skates and rays and 430 tonnes for *Macrourus* spp., and limits for other species, applied as follows:

SSRU A: 0 tonnes of any species
 SSRUs B, C, G: 50 tonnes of skates and rays, 40 tonnes of *Macrourus* spp.,
 60 tonnes of other species
 SSRU D: 0 tonnes of any species
 SSRU E: 0 tonnes of any species
 SSRU F: 0 tonnes of any species
 SSRUs H, I, K: 99 tonnes of skates and rays, 320 tonnes of *Macrourus* spp.,
 60 tonnes of other species
 SSRUs J, L: 50 tonnes of skates and rays, 70 tonnes of *Macrourus* spp.,
 40 tonnes of other species
 SSRU M: 0 tonnes of any species.

13.48 Other elements regulating this fishery were carried forward and Conservation Measure 41-09 (2008) was adopted.

13.49 The Commission agreed that the exploratory fishery for *Dissostichus* spp. in Subarea 88.2 in 2008/09 would be limited to two (2) Argentine, one (1) Chilean, two (2) Korean, four (4) New Zealand, three (3) Russian, one (1) South African, one (1) Spanish, three (3) UK and two (2) Uruguayan flagged vessels using longlines only.

13.50 The Commission agreed to remove the research fishing provision (see paragraph 13.13), and carry forward the precautionary catch limit for *Dissostichus* spp. of 567 tonnes, applied as follows:

SSRU A:	0 tonnes
SSRU B:	0 tonnes
SSRUs C, D, F, G:	214 tonnes
SSRU E:	353 tonnes.

13.51 The Commission agreed to carry forward the precautionary catch limit of 50 tonnes for skates and rays and 90 tonnes for *Macrourus* spp., and limits for other species applied as follows:

SSRU A:	0 tonnes of any species
SSRU B:	0 tonnes of any species
SSRUs C, D, F, G:	50 tonnes of skates and rays, 34 tonnes of <i>Macrourus</i> spp., 80 tonnes of other species
SSRU E:	50 tonnes of skates and rays, 56 tonnes of <i>Macrourus</i> spp., 20 tonnes of other species.

13.52 Other elements regulating this fishery were carried forward and Conservation Measure 41-10 (2008) was adopted.

Icefish

13.53 The Commission revised the limits on the fishery for *C. gunnari* in Subarea 48.3 (paragraph 4.46). Other elements regulating this fishery were carried forward and Conservation Measure 42-01 (2008) was adopted.

13.54 The Commission revised the limits on the fishery for *C. gunnari* in Division 58.5.2 (paragraph 4.46). Other elements regulating this fishery were carried forward and Conservation Measure 42-02 (2008) was adopted.

Krill

13.55 The Commission established a new general measure for exploratory fisheries for krill. This measure was based on the advice of the Scientific Committee, and included, *inter alia* (paragraphs 12.25 to 12.36):

- (i) four data collection plans for case-specific selection by Members and their flagged vessels;
- (ii) at least one observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation and, where possible, one additional observer on board throughout all fishing activities within the season;
- (iii) monthly reporting of fine-scale catch, effort and biological data on a haul-by-haul basis.

13.56 The Commission adopted Conservation Measure 51-04 (2008) (General measure for exploratory fisheries for *Euphausia superba* in the Convention Area in 2008/09).

13.57 The Commission agreed that the exploratory fishery for *E. superba* in Subarea 48.6 in 2008/09 would be limited to one Norwegian-flagged vessel using fishing techniques listed in Annex A of Conservation Measure 21-03. This was the first exploratory fishery for krill which the Commission has implemented.

13.58 The Commission set a precautionary catch limit for *E. superba* of 15 000 tonnes, of which no more than 11 250 tonnes may be taken from areas within 60 n miles of known breeding colonies of land-based krill-dependent predators (paragraph 12.33). Other requirements included:

- (i) application of general mitigation measures contained in Conservation Measure 25-03, and the mandatory use of marine mammal exclusion devices on trawls;
- (ii) at least one observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and, where possible, one additional observer on board throughout all fishing activities within the season;
- (iii) use of the 10-day catch and effort reporting system;
- (iv) collection of haul-by-haul catch, effort and biological data;
- (v) application of general environmental protection measures in Conservation Measure 26-01 and no offal discharge.

13.59 The Commission adopted Conservation Measure 51-05 (2008) (Limits on the exploratory fishery for *Euphausia superba* in Subarea 48.6 in 2008/09).

Crab

13.60 The Commission agreed to combine the requirements of Conservation Measures 52-01 (2007) and 52-02 (2007) into a single measure for the crab fishery in Subarea 48.3. The elements of these measures were carried forward to 2008/09 (paragraph 4.49). The Commission also introduced a requirement to carry at least one observer appointed in

accordance with the CCAMLR Scheme of International Scientific Observation on board each vessel during all fishing activities. Accordingly, Conservation Measure 52-01 (2008) was adopted.

13.61 The Commission also agreed that the notifications for new fisheries for crab in 2008/09 (paragraphs 12.2 and 12.37 to 12.39) should be considered as exploratory fisheries.

13.62 The Commission agreed that the exploratory fishery for crab in Subarea 48.2 in 2008/09 would be limited to one Russian-flagged vessel using pots only. The precautionary catch limit for crab was set at 250 tonnes (paragraph 12.38). In accordance with Conservation Measure 32-03 (Prohibition of directed fishing for finfish in Subarea 48.2), the Commission required that all live finfish taken as by-catch in the exploratory fishery for crab be released with the least possible handling, and that all live *Dissostichus* spp. be tagged prior to release. A total by-catch limit of 0.5 tonnes was set for all dead finfish. Other requirements in this fishery included, *inter alia*, scientific observations, a data collection plan and an experimental harvest regime. The Commission adopted Conservation Measure 52-02 (2008) (Limits on the exploratory fishery for crab in Subarea 48.2 in 2008/09).

13.63 The Commission agreed that the exploratory fishery for crab in Subarea 48.4 in 2008/09 would be limited to one Russian-flagged vessel using pots only. The precautionary catch limits for crab was set at 10 tonnes (paragraph 12.38). The Commission agreed that all live finfish taken as by-catch be released with the least possible handling, and that all live *Dissostichus* spp. be tagged prior to release. A total by-catch limit of 0.5 tonnes was set for all dead finfish. Other requirements in this fishery included, *inter alia*, scientific observations, a data collection plan and an experimental harvest regime. The Commission adopted Conservation Measure 52-03 (2008) (Limits on the exploratory fishery for crab in Subarea 48.4 in 2008/09).

Squid

13.64 The Commission carried forward the limits for the exploratory jig fishery for *M. hyadesi* in Subarea 48.3 in 2008/09 (paragraph 4.51), noting that no notification had been submitted for this fishery in 2008/09 (paragraph 12.2). Conservation Measure 61-01 (2008) was adopted.

New resolutions

Tariff classification for krill

13.65 The Commission adopted a new resolution which urged Members to adopt and use a specific tariff code for any trade in krill in order to improve Members' knowledge of the trade of krill products (Annex 5, paragraph 2.43(iii)). Accordingly, the Commission adopted Resolution 27/XXVII (Use of a specific tariff classification for Antarctic krill).

Ballast water exchange in the Convention Area

13.66 The Commission noted that the Antarctic Treaty Parties adopted Resolution 3 (2006) Ballast Water Exchange in the Antarctic Treaty Area, which set out Practical Guidelines for Ballast Water Exchange in the Antarctic Treaty area. The aim of the guidelines was to support early implementation of the practical measures identified in the International Convention for the Control and Management of Ships' Ballast Waters and Sediments, 2004 (IMO Ballast Water Management Convention). The guidelines were subsequently forwarded to the Marine Environment Protection Committee of the International Maritime Organisation (IMO), which also adopted them in Resolution MEPC.163(56).

13.67 The Commission noted that all CCAMLR Members have endorsed the guidelines for use in the Antarctic Treaty Area, through the IMO Resolution. It agreed to implement the guidelines for application to vessels engaged in harvesting and associated activities, as set out in Article II.3 of the CAMLR Convention. In addition, although in practical terms any vessel transiting the Convention Area on route to the Antarctic Treaty Area should already be using the guidelines, the guidelines were extended to vessels operating only in the Convention Area north of 60°S. Accordingly, the Commission adopted Resolution 28/XXVII (Ballast water exchange in the Convention Area).

CCAMLR Scheme of International Scientific Observation

13.68 The Commission endorsed the recommendation from SCIC to strengthen the Scheme of International Scientific Observation (see paragraph 11.3). The revised 'CCAMLR Scheme of International Scientific Observation' was adopted.

CCAMLR System of Inspection

13.69 The Commission considered a proposal to review and strengthen the System of Inspection which had been brought forward from CCAMLR-XXVI (CCAMLR-XXVII/38 Rev. 1).

13.70 The Commission noted that the proposal had been discussed in detail by the Conservation Measure Drafting Groups of both SCIC and the Commission and that significant progress had been made. However, some Members were unable to agree to the revised text, and the Commission urged Members to develop this issue during the intersessional period.

13.71 Australia expressed its great disappointment that this proposal was not able to be adopted at this meeting.

Krill notifications

13.72 The Commission considered various proposals in respect of improved reporting and submission of notifications to participate in krill fisheries in accordance with Conservation

Measure 21-03, including proposals from Japan and the USA (paragraphs 8.13 to 8.21). The Commission was unable to reach agreement on this matter, and urged Members to develop this issue during the intersessional period.

Market-related measures

13.73 The Commission considered a proposal for the adoption of market-related measures which had been brought forward from CCAMLR-XXVI by the European Community (CCAMLR-XXVII/39 Rev. 1). This matter was considered at length. However, the Commission was unable to reach consensus on this matter.

13.74 The European Community made the following intervention:

‘This will not be a long discussion as it is not a new one. It is the third time I have to make this intervention. I would like to start from where we left this discussion last year.

I am referring to CCAMLR-XXVI – Commission’s report 2007, precisely to paragraph 13.29, last line and paragraph 13.32, first line. Everyone can read the report and appreciate the situation and where we left off last year. The proposal, which was tabled in 2006, did at that time not have the support of some of the Members of the Commission, although the vast majority supported it. In 2007, we worked with those delegations throughout the annual meeting for two weeks and at the end of the session, we had support by all Members but one. This information can be found in CCAMLR-XXVI, paragraphs 13.29 and 13.32.

Everyone is aware of the background of the proposal. It is trying to address one of the main problems that we have here in CCAMLR as well as in other seas and oceans, illegal activities, so-called IUU fisheries. This organisation has already adopted a large number of measures to address IUU fishing activities, in particular Conservation Measures 10-06 and 10-07 consisting of Contracting Party and non-Contracting Party IUU Vessel Lists plus Conservation Measure 10-08, to promote compliance by nationals and lastly our Catch Documentation Scheme.

I would like to draw the attention of this organisation to the fact that some of these measures which I am referring to, such as the Catch Documentation Scheme and IUU Vessel Lists, have already important trade implications. A vessel on the IUU List cannot enter a port neither land catches, and thus trade them. The functioning of the Catch Documentation Scheme is self explanatory in terms of trade implications and effectiveness against IUU activities. This is why we have adopted a similar scheme for all marine fishery products in the EC IUU Regulation, as was demonstrated during the presentation yesterday. The EC Delegation sees these types of measures as vital when addressing IUU problems. However, despite this arsenal of measures, I have to refer to paragraph 7.3 of the Scientific Committee report:

“The Scientific Committee agreed that, given the available evidence, it could not conclude that IUU fishing, and its effects, particularly its by-catch of fish, benthos and birds, had significantly declined in the Convention Area”.

Moreover, I have to mention the intervention by Prof. Duhamel who noted that IUU fishing was still occurring in Divisions 58.4.1, 58.4.3b and 58.5.1 and had reoccurred in Subareas 58.6 and 88.1 after a number of years in which there had been no IUU fishing in those subareas, confirming that IUU fishing is a serious threat in the CAMLR Convention Area.

It is clear that we have a problem, and although we have some measures to address this issue, it is evident that they are not entirely effective. This is supported when looking at the list of IUU non-Contracting Party vessels where vessels which have been there since 2002 are repeatedly sighted, even this year, despite being listed. Consequently, we must develop a complementary measure for these types of situations.

We would like to remind that the European Community tabled this proposal in 2006 as a consequence of the adoption of Conservation Measures 10-06 and 10-07, where the Commission, in paragraphs 13.32 and 13.35 of CCAMLR-XXVI took a commitment to develop a market-related measure.

We would also like to stress the calls of international fora to adopt market-related measures. The last two relevant calls came from the UN General Assembly through Resolutions 61/105 (2006), paragraph 46, and 62/177 (2008), paragraph 55.

Moreover, another recent achievement was reached in the FAO in June 2008 in Bremen, Germany, where the Sub-Committee on Responsible Fish Trade of the FAO Committee on Fisheries (COFI) adopted draft guidelines for responsible fish trade, wherein trade measures are supported, and these draft guidelines have been forwarded for adoption at the next COFI meeting in March 2009. This guidance has been developed under the Chairmanship and Vice-Chairmanship of two Members of CCAMLR, one of which is objecting to the proposal here in CCAMLR, but not in that context.

Some might argue that this measure will only target developing countries which do not always have the resources to control their vessels. To that end, I would propose capacity building. This is something which we offer in our EC IUU Regulation as well. I also want to recall the Lisbon Declaration at Minister's level on IUU fishing, where several Ministers of developing countries adopted that declaration in October 2007.

Considering all this, the EC Delegation thinks that it would be unfortunate if we again miss the opportunity of adopting this proposal, which is the most effective measure to combat non-compliance.

I would also like to thank the NGOs for their presentation on IUU fishing and its disastrous consequences, and if we are going to object to this proposal again, the EC Delegation will consider the possibility of withdrawing the proposal. If the proposal is withdrawn, the EC will not be re-tabling it unless we have the 100% possibility of having it adopted.

Lastly, following our EC IUU Regulation, those vessels which are listed in the CCAMLR Contracting and non-Contracting Party IUU Lists after 1 January 2010 will

be automatically listed in our EC IUU List, and will, as a result, not be able to trade with the EC, directly or indirectly. This applies to non-cooperating countries as well.'

13.75 Argentina made the following statement:

'Argentina is highly committed to the objective of conservation of the Antarctic marine living resources. Argentina also was in agreement with the trade-related conservation measures adopted until now in the context of CCAMLR⁴. However, we are deeply concerned about the European Community's proposal related to the adoption of trade measures against CCAMLR Contracting and non-Contracting Parties⁵. We have also noted the background papers circulated by ASOC⁶ and IUCN⁷ in that respect. We therefore would like to make the following observations.

There are no valid legal precedents that justify the adoption of trade-related measures against States in CCAMLR.

The European Community's explanatory memorandum and the ASOC and IUCN contributions refer to certain precedents which, they state, are consistent with the conservation measure against States being proposed. This is not the case.

Firstly, FAO's International Plan of Action⁸ is not a binding legal instrument for members of that organisation, but a "voluntary" one. Besides, nowhere in that Plan is there a specific reference to the application of trade measures against States as such. An example of this is the reference the Plan makes to the catch documentation and certification requirements schemes⁹.

The European Community, ASOC and IUCN also refer to UNGA's Resolutions 61/105, 62/177 and 62/215. Although those Resolutions contain important statements from Members in relation to sustainable fisheries and the conservation of the marine resources and environment, contrary to what is implied in the European Community's explanatory memorandum, none of those resolutions specifically or explicitly deal with the issue of trade measures against States.

Finally, in its memorandum, the European Community refers to the "practice of States through international organisations with responsibilities in fisheries conservation and management"¹⁰. Argentina has difficulties in understanding what the European Community is referring to, given that it does not offer any evidence of this alleged practice. In any event, any practice that might exist in that respect is not general

⁴ 10-02 related to the 'Licensing and inspection obligations of Contracting Parties with regard to their flag vessels operating in the Convention Area', 10-05 related to the 'Catch Documentation System for *Dissostichus* spp.', 10-06 and 10-7 that relate to 'Scheme to promote compliance by Contracting [non-Contracting] Party vessels with CCAMLR conservation measures'.

⁵ CCAMLR- XXVII/BG/39, from now on 'EC proposal'

⁶ CCAMLR- XXVII/BG/28, from now on 'ASOC Background Document'

⁷ CCAMLR- XXVII/BG/37, from now on 'IUCN Background Document'

⁸ FAO's International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

⁹ See FAO's International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, paragraph 69.

¹⁰ EC proposal, page 2

enough nor is followed by the sense of obligation required to become a source of international law, especially taking into account the strong differences that exist within the international community in respect of trade measures against States.

Argentina is not a Contracting Party in any RFMO that applies trade sanctions against States¹¹. In any event, notwithstanding any precedents that may exist in other international organisations, Argentina has serious difficulties in accepting the imposition of sanctions to States not party to CCAMLR when those States have not given their consent to abide by the provisions of the Convention.

We believe that, if such a measure were adopted, it would give rise to a serious breach of one of the most basic principles of international law contained in the Vienna Convention on the Law of Treaties, which states that “[a] treaty does not create either obligations or rights for a third State without its consent”¹².

The consistency of the proposed trade measures with WTO rules is doubtful.

The European Community maintains that certain “conservation measures that are agreed by competent international organisations fall within the exception of GATT Article XX(g)”¹³ and thus are consistent with WTO rules. That is far from being established.

Article XX is a fundamental provision of the GATT which, if impaired, can have serious consequences for the multilateral trading system regulated by the WTO, of which most CCAMLR Contracting Parties are Members. In spite of what the European Community asserts, nothing in the text or the context of GATT Article XX supports the assertion that a conservation measure adopted by an international organisation complies, by that mere fact, with the standard required by that obligation.

The European Community statement implies an extremely risky interpretation of Article XX of GATT 1994. The adoption of this point of view would imply automatic consistency between measures derived from international conservation organisations and the WTO rules. That would result, for example, in that certain measures adopted within such organisations would be immune to revision by the WTO Members or its Dispute Settlement System, regardless of the particular or restrictive features of those measures. Such consequence is simply not acceptable.

Besides, the WTO Appellate Body has never made an interpretation of GATT Article XX 1994 as adventurous as the European Community’s. Quite the contrary, the Appellate Body has said that for a measure to comply with the Article XX standard, a series of strict requirements must be met, which the European Community’s proposal does not appear to fulfil.

By virtue of the European Community proposal, we face the very real prospect that while sanctioning a State, not only vessels and exporters engaged in IUU fishing would be penalised, but also vessels and exporters of that State that fully comply with

¹¹ IUCN Background Document, Table 1

¹² Articles 34 and 35

¹³ EC proposal, page 2

CCAMLR regulations and are not involved at all in IUU fishing. That would result in an unfair restriction to international trade and an arbitrary and unjustifiable discrimination against WTO rules. This is also unacceptable.

Given the uncertainty regarding the type and extent of breach that could lead to the identification and subsequent sanctioning of a State, the scheme proposed by the European Community may allow the adoption of arbitrary measures contrary to multilateral trade rules. Yesterday's discussion highlighted the legal problems that may arise with such ambiguous terms as "appropriate" or "act[s] or omissions that may [diminish] the effectiveness" of a conservation measure (paragraph 2.c of the European Community's proposal).

Besides, it is worth mentioning that although there are a few controversies related to environmental or conservation matters that have been brought to the WTO (for example, the cases of *US – Shrimp*, *EC – Asbestos*, and more recently, *Brazil – Tyres*), in none of those controversies was the consistency of a measure adopted by virtue of the mandate of an environmental or conservation international organisation specifically addressed. Rather, those cases were about unilateral measures adopted by the respondent country.

Even measures aimed at legitimate objectives can be contrary to the WTO due to the way they are implemented. In particular in the *Shrimp* case, the WTO initially determined that, notwithstanding that the objective aimed at by the USA was desirable, the way the conservation measure was applied constituted an arbitrary and unjustifiable discrimination, contrary to WTO law.

In this context, some observer organisations in CCAMLR such as ASOC¹⁴ and IUCN¹⁵ have drawn attention to an alleged WTO declaration in the context of the Committee of Trade and Environment (CTE) in relation to the consistency of certain ICCAT and CCAMLR measures with WTO rules, stressing that both schemes are examples of appropriate trade measures consistent with multilateral rules. By virtue of that, ASOC and IUCN maintain that trade measures against States would be consistent with WTO rules.

Argentina wishes to clarify some errors in these arguments.

In reality, the declaration within the CTE which ASOC and IUCN refer to is simply a "note" from the WTO Secretariat related to the environmental benefits resulting from the withdrawal of commercial restrictions and distortions in the fishing sector¹⁶.

Thus, those statements, as well as being made in a context unrelated to the trade measures issue, do not represent either the WTO opinion, nor that of the WTO Members, but only the Secretariat's, and therefore may not stand as a valid legal precedent for today's debate. In that sense, it is hard to imagine how the WTO Members could have made such a statement when they have not yet reached a definitive agreement among themselves regarding the relationship between trade and the environment.

¹⁴ Idem, page 5

¹⁵ Idem, page 5

¹⁶ WT/CTE/W/167

Given that the WTO has not expressed a formal opinion regarding this specific issue, and in spite of the European Community and the IUCN¹⁷ statements, any assertion that assumes the automatic consistency between the universe of measures adopted under international conservation organisations, among them measures such as the one proposed by the European Community, and WTO rules is, to say the least, entirely speculative.

The imposition of trade measures against States is beyond CCAMLRL's competence.

Argentina considers that the legal or quasi-legal determination of an infringement or violation by a State, be it Party or non-Party, made within an organisation that is not intended to make such determinations nor has jurisdictional competence to do so, carries high risks for the multilateral trading system, and for the international community in general.

In this respect, in spite of what has been stated by ASOC¹⁸, in accordance with the text of the Convention as it currently stands, neither the Commission nor SCIC have powers to make a legal determination of a violation of CCAMLRL obligations by a Contracting or non-Contracting Party State.

Secondly, contrary to other jurisdictional or quasi-judicial international systems, the European Community's proposed procedure does not provide all the necessary legal and procedural guarantees to the State identified and potentially sanctioned by CCAMLRL, nor is there clarity on the basis upon which the determination of its non-compliance would be made.

As previously pointed out, given the lack of clarity in respect of the type and extent of the breach that could lead to identification and further sanction of a State, the scheme proposed by the European Community could allow for arbitrary measures inconsistent with a fair due process for the identified State.

Furthermore, and notwithstanding ASOC's statement¹⁹, there are no precedents in CCAMLRL regarding the possibility of applying trade measures against States. Conservation Measures 10-06 and 10-07 exclusively refer to sanctions against Party and non-Contracting Party VESSELS involved in IUU fishing, and not to States. Therefore, and once more contrary to ASOC's statement, the European Community's proposal is, in effect, different in essence and objectives to the CCAMLRL conservation measures adopted to date.

Therefore, the proposal for market-related measures against States is not consistent with the CCAMLRL regime.

The precedent that would be established by the adoption of the European Community proposal would mean that Argentina or other States could face sanctions in this, or other fora completely different to CCAMLRL but under similar schemes of dubious legality as the one proposed by the European Community, generating unpredictable consequences for the international community.

¹⁷ IUCN Background Document, page 2

¹⁸ ASOC Background Document, page 2

¹⁹ Idem

For these reasons, although Argentina appreciates the European Community's efforts on this matter, it cannot, at this point, change its consistently maintained position and join consensus. Nevertheless, Argentina is fully willing to continue conversations with the European Community and other Members in order to find a mutually acceptable solution for the Commission.'

13.76 New Zealand expressed its deep regret that consensus was not obtained on the European Community's proposal for a conservation measure on market-related measures to promote compliance. New Zealand commented that the European Community's proposal would have provided an important weapon in CCAMLR's arsenal in the fight against IUU fishing. New Zealand noted that IUU fishing continued to constitute a serious challenge to the objectives of the Convention and that it was incumbent on all Members to join in efforts to combat IUU fishing. New Zealand urged that the proposal for CCAMLR to adopt market-related measures be retained on the Commission's agenda.

13.77 Russia made the following statement:

'The objective for establishing CCAMLR was the conservation of Antarctic marine biological resources. And now we are faced with this latest challenge, that of increasing the effectiveness of the measures that we are adopting for the conservation of biological resources in this region.

The closure of markets to the fish products derived from illegal fishing is, in practice, one of the most effective measures for combating illegal fishing.

However, we would like to highlight specifically the undisputed fact that CCAMLR is not a Regional Fisheries Management Organisation, therefore an automatic transfer of the current practices of such organisations is not acceptable in the context of CCAMLR. Therefore, the proposal to adopt market-related measures deserves to be carefully considered both within the Commission and on a national level, since such measures not only affect the fishing industry, but also have serious economic, legal and political consequences.

This is particularly relevant for the Russian Federation, which, as you know, is not a member of WTO. Over a number of years we have been preparing to join this organisation and for this reason have been watching and analysing any international-level measures that fall within the competence of WTO. We have to admit that the procedures for internal coordination of the proposed project have not been finalised in our country to date, and at this session we are not in a position to support or oppose the EC's proposal which is under discussion.

Nevertheless, we express our readiness and willingness to continue working together with interested delegations on the development of the document in order to reach a consensus and achieve the stated objective of closing the markets to the fish products derived from IUU fishing.

13.78 It was noted that most Members strongly supported the views of the European Community and had expressed their deep disappointment that the draft conservation measure had not been adopted. The proposal was developed in the context of a market-related

measure which would be implemented only as a last resort and when other measures had proved unsuccessful in preventing, deterring and eliminating any action which diminished the objectives of conservation measures.

13.79 Several Members appreciated Argentina's efforts in providing a thorough and precise analysis of the issue which could be of use to Members for future discussions.

13.80 The European Community recalled that last year, all Members but one had agreed that the proposed market-related measure would strengthen the CCAMLR set of conservation measures aimed at preventing, deterring and eliminating IUU fishing in the Convention Area (CCAMLR-XXVI, paragraph 13.32).

13.81 China thanked the European Community for its effort, and joined those Members in thanking Argentina for its detailed statement. China hoped that Members could continue their creative work and reach consensus soon. China is willing to contribute to the consensus-building process.

13.82 The Commission urged Members to further develop this issue during the intersessional period.

13.83 Belgium thought that the European Community's presentation was very clear and a sort of demonstration. It was therefore unnecessary for Belgium to bring new arguments in favour of the rapid adoption of the proposed conservation measure. Belgium emphasised that without concrete results on this and related types of measures, it will become more and more difficult for Belgium to justify its active presence at CCAMLR.

13.84 France made the following statement:

'France supports the European Community's (EC) proposal wholeheartedly.

France wishes to express its disappointment that after three years of discussions, CCAMLR has been unable to adopt this conservation measure, which is an essential element for an effective fight against IUU fishing. As the French scientist stated to the Scientific Committee, IUU fishing continues to wreak havoc in many parts of the CAMLR Convention Area.

France has been able to fight IUU fishing effectively in its EEZs, but does not have the means to do the same in all parts of the Convention Area which are at risk. Other tools are necessary.

France thanks Argentina for the long "indictment" which has just been made against the EC's proposal as, for the first time for three years, we are departing from general references to international law and finally have some specific points to reflect on. The French Delegation therefore wishes to obtain the full text of this statement. We intend to examine it in detail, but are confident that we will be able to contest all the points put forward by Argentina.'

13.85 The UK joined other Members in supporting the development of market-related measures, and hoped that further progress can be made during the intersessional period.

13.86 The USA also joined others in expressing strong regret that consensus could not be reached on the European Community's proposal concerning market-related measures. It praised the European Community for working hard over the past three years to advance this proposal, which has precedents in a number of RFMOs. It noted that it was necessary to take concrete steps to combat IUU fishing, and trade measures provide an important tool in that regard. Contrary to the views stated by the Delegation of Argentina, the USA did not consider that the European Community's proposal in any way violated international law, including international trade law. Efforts to adopt a conservation measure on this topic should continue within CCAMLR.

13.87 Germany supported the development of market-related measures, and thanked Argentina for its detailed position statement. Germany hoped that further progress could be made during the intersessional period.

13.88 Sweden deeply regretted that the Commission was prevented from using efficient weapons against IUU fishing and supported statements by the European Community, New Zealand, France, UK, USA and Germany.

13.89 Spain supported the development of market-related measures, and thanked Argentina for its detailed position statement. Spain hoped that further progress could be made during the intersessional period.

13.90 South Africa thanked the European Community for its perseverance in trying to advance the measure, and expressed disappointed that the measure was not adopted. South Africa thanked Argentina for its detailed intervention and for indicating its willingness to cooperate with other Members. South Africa urged Argentina to work during the intersessional period so that CCAMLR could take such a measure forward in its combat against IUU fishing.

13.91 Australia made the following statement:

'Together with the many delegations that have already done so, Australia expresses deep regret with the fact that this proposed conservation measure cannot be brought forward.

Contrary to the views of other delegations, we do not welcome the late statement from Argentina. These views ought to have been conveyed some time ago, and at the very least last year. Rather than spending three years developing a thesis on the topic, it would have been useful to put these issues on the table and allow substantive discussion of them. Further, we do not agree with several aspects of the substantive points asserted in Argentina's statement.

This is my eleventh meeting, and I have seen CCAMLR develop over this time. When we began discussions on the CDS, we were breaking new ground. We encountered some difficulties, but with an enormous amount of goodwill and constructive engagement, we were able to move forward.

We must remember our mandate in CCAMLR – to conserve Antarctic marine living resources, where conservation includes rational use. We know that IUU fishers have

had a direct impact on the objective of our Convention. It causes great harm to ecosystems. IUU fishing also takes away valuable resources from each and every Member of the Commission.

We used to be world leaders in combating IUU fishing and there has been such a strong will to move forward on this issue. However, we are very saddened that this goodwill has evaporated. We have gone from being innovative to “dumb and dumber”.

We have only limited means in our arsenal to combat IUU fishing. IUU fishing continues. It may have diminished – in part because Vidal Armadores’ vessels have been sunk or have been arrested. However, they will be back; IUU will continue, and will increase if we take our eye off the ball.

Several Members of the Commission – France, South Africa and Australia – have expended much effort and considerable money to combat IUU fishing. It would be good to have the support of all CCAMLR Members in these initiatives, especially through complementary measures. The market measures proposal would have been a tremendous help to the efforts of these countries.

We need to reduce the profitability of IUU activity – we need to send IUU fishers broke. It is only through this type of response that we can have any realistic hope of putting a serious dent in IUU fishing. To this end, the market measures proposal is a critical tool that Members will require to have at their disposal.

WTO consistency is not directly relevant to the proposed conservation measure. The proposed conservation measure merely provides for the Commission to recommend trade measures. It is up to each Member to decide whether to implement sanctions, and if so what type of sanctions. It is therefore up to each Member to consider the WTO compliance of the sanctions which that Member chooses to apply.

Further, Australia asserts that the imposition of sanctions is not beyond the competency of the Commission.

We have become hostage to the tyranny of consensus on this issue: while Australia agrees that consensus is fundamental to the Antarctic Treaty System and indeed one of its inherent strengths, repeating over and over the same argument without trying to find a way forward is against the spirit of consensus in the Antarctic Treaty System.

In failing to move forward on market related measures we have let ourselves down.’

13.92 Norway expressed general appreciation to the European Community for its very sincere efforts of combating IUU. The European Community’s similar work in other fora had resulted in a dramatic decrease in IUU fishing in Norwegian waters. Norway noted Argentina’s concerns, and hoped that these issues may be resolved through further intersessional consultation.

13.93 Italy totally supported the European Community’s proposal, and thanked Argentina for its detailed intervention. Italy hoped that further progress can be achieved in the intersessional period.

13.94 Namibia thanked the European Community for tabling its market-related measures. Namibia also thanked Argentina for its detailed statement, and looked forward to fruitful discussion in the near future. Namibia encouraged all delegates to study Members' positions in order to reach consensus at the next meeting.

13.95 Brazil expressed its appreciation for the efforts made by the European Community to improve the text of its proposal for a conservation measure concerning the adoption of market-related measures to promote compliance. In line with other delegations, Brazil expressed the belief that the Argentine statement constituted an important contribution to the debate on market-related measures and indicated that it should be taken into consideration by the European Community in the re-drafting of the proposal.

13.96 ASOC made the following statement:

'ASOC would like to thank the delegate from the European Community for his tireless efforts to achieve passage of the market-related measures conservation measure. We are deeply disappointed at the lack of openness by Members of this Commission to the sponsor's efforts to achieve consensus.

ASOC has promoted this measure since its inception. Two years ago, eight Members of the Commission opposed this measure. In 2007, work by governments and NGOs in support of this measure reduced the opposition to one Member. Going into this year's meeting ASOC was hopeful that this measure could pass. That hope faded into disappointment as other Members who had supported the measure last year reversed their position.

CCAMLR has prided itself on being a leader in the effort to end IUU fishing. However, with the utter failure to achieve consensus this year, it is becoming a follower. The use of market measures, as a cost-effective tool in the fight against IUU fishing, is becoming customary across the world.

We support the request from France for the arguments and concerns put forward by Argentina to be officially submitted to CCAMLR Members so that they can be addressed. The UK's invitation for other Members to put further proposals forward is useful. We invite CCAMLR Member governments who opposed this measure to come together and to adopt a market measure and so re-establish CCAMLR's leadership role as a matter of urgency.'

13.97 China pointed out that it is not appropriate for an observer to accuse Members of a lack of openness. As consensus is the basic principle of decision-making in CCAMLR, nor is it appropriate to label Members as supporting or opposing a proposal when no consensus was reached. China wondered whether silence of a Member should be labelled as supporting or opposing a proposal, and holds that such labelling may impact the right of Members to participate in consultation while an agenda item is still open and such confrontational practice is not helpful to consensus-building. China suggested Members refuse such a labelling practice, and work together to reach consensus.

Resolution 22/XXV

13.98 The Commission noted that Argentina had proposed a revision to Resolution 22/XXV (International actions to reduce the incidental mortality of seabirds arising from fishing). Argentina advised that the main revisions related to references to Article IX of the Convention and the provisions of Resolution 22/XXV. The Commission was unable to reach agreement on the proposed revisions within the time available at the meeting.

General

13.99 Argentina recalled that the inclusion of the krill fisheries in order to reduce the number of notifications that are not acted on in the category of exploratory fisheries, would in fact imply their closure except for Members and that could constitute a means to control access, when in reality exploratory fisheries are determined on the basis of the conditions of the resource and the information available about them.

13.100 Australia advised the Commission that any fishing or fisheries research activities in that part of Divisions 58.4.3a, 58.4.3b and 58.5.2 that constitutes the Australian EEZ around the Australian Territory of Heard Island and McDonald Islands, must have the prior approval of Australian authorities. The Australian EEZ extends up to 200 n miles from the Territory. Unauthorised or illegal fishing in these waters is a serious offence under Australian law. Australia seeks the assistance of other CCAMLR Members in ensuring their nationals and vessels are aware of the limits of the Australian EEZ and the need for prior permission to fish there. Australia has implemented strict controls to ensure that fishing in its EEZ occurs only on a sustainable basis. Presently, fishing concessions are fully subscribed and no further concessions for legal fishing in the EEZ are available. Australian legislation provides for large penalties for illegal fishing in Australia's EEZ, including the immediate forfeiture of foreign vessels found engaged in such activities. Any enquiries about fishing in the Australian EEZ should be made initially to the Australian Fisheries Management Authority.

13.101 The Commission expressed its appreciation to Ms G. Slocum (Australia) for chairing the Conservation Measure Drafting Groups of both SCIC and the Commission.