

CONSERVATION MEASURES

12.1 The Commission's consideration of revised conservation measures, new conservation measures, new resolutions and related matters is reported in this section. Conservation measures and resolutions adopted at CCAMLR-XXIX will be published in the *Schedule of Conservation Measures in Force 2010/11*.

Review of existing conservation measures and resolutions

12.2 The Commission noted that the following conservation measures will lapse on 30 November 2010: 32-09 (2009), 33-02 (2009), 33-03 (2009), 41-01 (2009), 41-03 (2009), 41-04 (2009), 41-05 (2009), 41-06 (2009), 41-07 (2009), 41-09 (2009), 41-10 (2009), 41-11 (2009), 42-01 (2009), 42-02 (2009), 51-04 (2009), 51-05 (2009), 52-01 (2009), 52-02 (2009) and 52-03 (2009). All of these measures dealt with fishery-related matters in 2009/10.

12.3 The Commission agreed that the following conservation measures³ will remain in force in 2010/11:

Compliance

10-01 (1998), 10-03 (2009), 10-05 (2009), 10-06 (2008) 10-07 (2009), 10-08 (2009) and 10-09 (2009).

General fishery matters

22-01 (1986), 22-02 (1984), 22-03 (1990), 22-05 (2008), 22-08 (2009), 23-01 (2005), 23-02 (1993), 23-03 (1991), 23-04 (2000), 23-05 (2000), 24-02 (2008), 25-02 (2009), 25-03 (2009) and 26-01 (2009).

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), 33-01 (1995), 41-02 (2009), 41-08 (2009), 51-02 (2008), 51-03 (2008) and 51-07 (2009).

Protected areas

91-01 (2004) and 91-03 (2009).

12.4 The Commission agreed that the following resolutions will remain in force in 2010/11: 7/IX, 10/XII, 14/XIX, 15/XXII, 16/XIX, 17/XX, 18/XXI, 19/XXI, 20/XXII, 22/XXV, 23/XXIII, 25/XXV, 27/XXVII, 28/XXVII, 29/XXVIII, 30/XXVIII and 31/XXVIII.

Revised conservation measures

12.5 The Commission revised the following conservation measures³:

³ Reservations to these measures are given in the *Schedule of Conservation Measures in Force in 2010/11*.

Compliance

10-02 (2008) and 10-04 (2007).

General fishery matters

21-01 (2009), 21-02 (2009), 21-03 (2009), 22-04 (2006), 22-06 (2009), 22-07 (2009), 23-06 (2009), 23-07 (2009), 24-01 (2008), 51-01 (2008) and 51-06 (2009).

12.6 The revisions are detailed below.

Compliance

Licensing and inspection

12.7 The Commission revised the information about licences which each Contracting Party provides to the Secretariat. Paragraph 3 of CM 10-02 was deleted and minor amendments were made to paragraph 4. The revised CM 10-02 (2010) was adopted.

12.8 Consequential changes to paragraph references were made in CMs 21-01, 21-02 and 21-03. The revised CMs 21-01 (2010) and 21-02 (2010) were adopted. Further revision was made to CM 21-03 (see paragraph 12.10).

Automated satellite-linked VMS

12.9 The Commission agreed to extend all VMS reporting requirements in CM 10-04 to vessels fishing in krill fisheries (Annex 6, paragraph 2.48). Footnote 4 was deleted from that measure and the revised CM 10-04 (2010) was adopted.

General fishery matters

Notifications

12.10 The Commission requested that notifying Members include a detailed description of the method of estimating the green weight of krill caught and, if conversion factors are used, a detailed description of the method of determining each conversion factor. The revised CM 21-03 (2010) was adopted.

Gear regulations

12.11 The Commission agreed that the routine use of small gillnets in multi-year scientific research programs should not require annual notification, irrespective of the depth of deployment of the gillnets. In addition, the requirements for vessels seeking to transit the Convention Area carrying gillnets was amended, such that this requirement now applies to

any vessel carrying gillnets with a total cumulative area measuring greater than 100 m². Such vessels must give advance notice of their intent, including the expected dates and route of their passage through the Convention Area. The revised CM 22-04 (2010) was adopted.

Bottom fishing in the Convention Area

12.12 The Commission revised the pro forma for use in the submission of preliminary assessments of the potential for proposed bottom fishing activities to have significant adverse impacts on VMEs (CM 22-06, Annex A). The revision will facilitate the work of WG-FSA to estimate the spatial footprint and potential impact of notified fishing activities (paragraph 5.3). The revised CM 22-06 (2010) was adopted.

12.13 The Commission agreed that the interim measure for bottom fishing activities subject to CM 22-06 would be reviewed in 2012 (CM 22-07, paragraph 10). The revised CM 22-07 (2010) was adopted.

Data reporting

12.14 The Commission revised the data reporting system for krill fisheries so that the 80% level (and subsequently the 50% level) would apply to the subarea-specific trigger levels, and that the five-day catch and effort reporting system would be implemented once this level had been reached (paragraph 4.9). The revised CM 23-06 (2010) was adopted.

12.15 The Commission revised the reporting deadline for daily catch and effort reports and the time for submission of daily reporting was brought forward to 12 midday UTC in order to improve the timeliness with which the Secretariat was able to receive and process daily reports (Annex 6, paragraph 2.48). The revised CM 23-07 (2010) was adopted.

Research and experiments

12.16 The Commission agreed to exempt catches of krill and finfish of less than 1 tonne taken during scientific research from the notification and reporting requirements in paragraph 2 of CM 24-01 (paragraph 4.71). The revised CM 24-01 (2010) was adopted.

Krill fisheries

12.17 The Commission revised the precautionary catch limit for krill to 5.61 million tonnes for Subareas 48.1 to 48.4, and recalled that the trigger level of 620 000 tonnes is not linked to the assessment of B_0 and the precautionary catch limit (paragraph 4.29). The revised CM 51-01 (2010) was adopted.

Scientific observations in krill fisheries

12.18 The Commission revised the general measure for scientific observation in krill fisheries (CM 51-06) in order to extend the target observer coverage rate to no less than 50% of vessels in 2010/11 and 2011/12 (paragraph 4.20). The systematic observer coverage would comprise:

- (i) a target coverage rate of no less than 50% of vessels in 2010/11 and 2011/12;
- (ii) a target coverage rate of more than 20% of observed hauls set by a vessel per fishing season being sampled;
- (iii) all vessels being observed at least once every two fishing seasons;
- (iv) coverage of areas and seasons within each subarea or division in accordance with the Scientific Committee's advice on distribution of observer coverage (SC-CAMLR-XXIX, Table 4).

12.19 In addition, the Commission agreed that the method used to estimate the green weight of krill caught should be reported in accordance with CM 21-03. The revised CM 51-06 (2010) was adopted.

New conservation measures

General fishery matters

Fishing seasons, closed areas and prohibition of fishing

12.20 The Commission reaffirmed 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 2010/11 and CM 32-09 (2010) was adopted.

By-catch limits

12.21 The Commission carried forward the existing by-catch limits in Division 58.5.2 in 2010/11, and CM 33-02 (2010) was adopted.

12.22 The Commission carried forward the by-catch limits for exploratory fisheries in 2010/11, taking account of the revised catch limits for *Dissostichus* spp. in Division 58.4.3b and the consequential changes to by-catch limits. CM 33-03 (2010) was adopted.

Year-of-the-Skate

12.23 The Commission recalled the general success of the initiatives undertaken during the Year-of-the-Skate and the need to continue to collect data on tagged skates (paragraph 4.54).

The Commission agreed to remove the mandatory requirement to tag skates in exploratory fisheries, and to revise the by-catch requirements (CM 33-03) and the sampling procedure for recaptured tagged skates (CM 41-01) in order to facilitate the continued collection of data on tagged skates.

Toothfish

12.24 The Commission carried forward the limits on the fishery for *D. eleginoides* in Subarea 48.3 (paragraph 4.43), and agreed that longline fishing in 2010/11 may begin on 21 April 2011 subject to the conditions described in paragraphs 5 and 7 of CM 41-02. CM 41-02 (2009) remained in force.

12.25 The Commission carried forward the limits on the fishery for *D. eleginoides* in Division 58.5.2 (paragraph 4.43) and CM 41-08 (2009) remained in force.

12.26 The Commission revised the catch limits for *D. eleginoides* and *D. mawsoni* in the fishery for *Dissostichus* spp. in Subarea 48.4. The revised catch limit for *D. eleginoides* was 40 tonnes in Subarea 48.4 North, and the revised catch limit for *Dissostichus* spp. was 30 tonnes in Subarea 48.4 South in 2010/11 (paragraph 4.43). Other elements regulating this fishery were carried forward and CM 41-03 (2010) was adopted.

12.27 The Commission discussed access to the exploratory fisheries for *Dissostichus* spp. in Subareas 48.6, 88.1 and 88.2 and Divisions 58.4.1, 58.4.2, 58.4.3a and 58.4.3b in 2010/11. During the course of this discussion:

- (i) Argentina withdrew from the exploratory fisheries for *Dissostichus* spp. in Subareas 88.1 and 88.2 (see also paragraph 11.32);
- (ii) Korea withdrew one vessel (*Insung No. 1*) from the exploratory fishery for *Dissostichus* spp. in Subarea 48.6 and three vessels (including the *Insung No. 1*) from the exploratory fishery for *Dissostichus* spp. in Division 58.4.2;
- (iii) New Zealand withdrew one of its vessels from the exploratory fishery for *Dissostichus* spp. in Division 58.4.1.

12.28 The Commission agreed that access to exploratory fisheries for *Dissostichus* spp. in Subareas 48.6, 88.1 and 88.2 and Divisions 58.4.1, 58.4.2, 58.4.3a and 58.4.3b in 2010/11 would be open to those Members and vessels listed in Table 1, and that the catch limits for target and by-catch species listed in Table 2 would apply to these fisheries in 2010/11 (paragraphs 11.31 to 11.36).

12.29 The Commission agreed to carry forward the research requirements in these exploratory fisheries for *Dissostichus* spp. in 2010/11, including the following elements:

- (i) in Subarea 48.6 and Divisions 58.4.1, 58.4.2 and 58.4.3a, each vessel will be required to conduct 10 research hauls in each SSRU fished. The specifications for research hauls are described in CM 41-01, paragraph 4, and the position of each haul (start of set) will be on, or close to, the position provided by the Secretariat, based on a stratified random design (see also paragraph 12.30);

- (ii) in Division 58.4.3b, the fishery was closed pending further advice from the Scientific Committee (paragraph 11.4), and the notified vessel was required to conduct the research plan described in paragraph 12.31, including tagging *Dissostichus* spp. at a rate of at least five fish per tonne of green weight caught;
- (iii) in Subarea 48.6 and Divisions 58.4.1, 58.4.2 and 58.4.3a, each vessel will tag *Dissostichus* spp. at a rate of at least three fish per tonne of green weight caught;
- (iv) in Subareas 88.1 and 88.2 each vessel will tag *Dissostichus* spp. at a rate of at least one fish per tonne of green weight caught;
- (v) the lengths of tagged *Dissostichus* spp. must reflect the length frequency of caught *Dissostichus* spp., and in regions where both species occur, the tagging rate will be in proportion to the catches of each species. Each vessel catching more than 2 tonnes of *Dissostichus* spp. in a fishery is required to achieve a minimum tag overlap statistic (paragraph 11.15) of 50% in 2010/11 and 60% from 2011/12 onwards, calculated using lengths aggregated by 10 cm length intervals.

12.30 The Commission agreed that the Secretariat would allocate starting positions for research hauls in Subareas 48.6 and Divisions 58.4.1, 58.4.2 and 58.4.3a. Three random lots of starting positions will be provided by the Secretariat, on request from the notifying Member or its vessel, and prior to the vessel's arrival at the SSRU (paragraph 11.26).

12.31 The Commission agreed to research fishing by one Japanese-flagged vessel in Division 58.4.3b in 2010/11. The research would be conducted in accordance with the relevant elements of CM 41-07, and would take no more than 15 tonnes of *Dissostichus* spp. from the southeast sector of the sampling grid agreed by the Commission in 2009 (CCAMLR-XXVIII, paragraph 12.47). The research plan would sample 24 stations, each separated by 7.5 n miles, and would include:

- (i) a comparison of the fishing characteristic of trotline and Spanish longline gear;
- (ii) observations on the physical condition of *Dissostichus* spp. caught using both gear types;
- (iii) observations on depredation;
- (iv) biological observations including ageing of fish;
- (v) reporting of data on VMEs.

12.32 The Commission revised the tagging protocol in the general measures for exploratory fisheries for *Dissostichus* spp. in 2010/11. Other elements regulating this measure were carried forward, and CM 41-01 (2010) was adopted.

12.33 The Commission agreed to the limits for exploratory fisheries for *Dissostichus* spp. in 2010/11, with access, catch limits and research requirements as described in paragraphs 12.28 to 12.32 and Tables 1 and 2. The following conservation measures were adopted:

- CM 41-04 (2010) – exploratory fishery for *Dissostichus* spp. in Subarea 48.6
- CM 41-05 (2010) – exploratory fishery for *Dissostichus* spp. in Division 58.4.2
- CM 41-06 (2010) – exploratory fishery for *Dissostichus* spp. in Division 58.4.3a
- CM 41-07 (2010) – exploratory fishery for *Dissostichus* spp. in Division 58.4.3b
- CM 41-09 (2010) – exploratory fishery for *Dissostichus* spp. in Subarea 88.1
- CM 41-10 (2010) – exploratory fishery for *Dissostichus* spp. in Subarea 88.2
- CM 41-11 (2010) – exploratory fishery for *Dissostichus* spp. in Division 58.4.1.

12.34 These conservation measures included the following limits and requirements:

- (i) all exploratory fisheries for *Dissostichus* spp. in 2010/11 were limited to vessels using longlines only;
- (ii) no more than one vessel per country shall fish at any one time in the exploratory fishery for *Dissostichus* spp. in Subarea 48.6;
- (iii) the general limits and measures for by-catch, including move-on rules provided in CM 33-03;
- (iv) the data collection and research plans and tagging protocols provided in CM 41-01;
- (v) the removal of the tagging requirements for skates (see also paragraph 12.23);
- (vi) the requirements for environmental protection provided in CMs 22-06, 22-07, 22-08 and 26-01.

12.35 New Zealand made the following statement:

‘New Zealand will join consensus today in the adoption of the conservation measures regarding the new and exploratory toothfish fisheries, but not without serious reservations about the provision of access to several vessels notified by the Republic of Korea.

New Zealand and other Members, during the course of this annual meeting of the Commission, have expressed their strong concern over the systematic and deliberate lack of compliance with the required tagging procedures set out in CM 41-01, in particular the requirement to tag a representative length frequency of the catch to achieve a high “tag overlap statistic”. New Zealand recalls the advice of the Scientific Committee (SC-CAMLR-XXIX, paragraph 3.138) that the *Insung No. 1*, the *Jung Woo No. 2*, and the *Jung Woo No. 3* have not complied with this conservation measure for the past four seasons despite strong advice from the Scientific Committee on the need to improve the performance of these same vessels (SC-CAMLR-XXVIII, paragraphs 4.148 to 4.151) and the Scientific Committee’s emphasis in 2009 and 2010 on the importance of achieving a high tag overlap statistic (SC-CAMLR-XXVIII, paragraph 4.151; SC-CAMLR-XXIX, paragraph 3.141).

The Scientific Committee has explicitly recognised (SC-CAMLR-XXIX, paragraph 3.139) that failure by vessels to comply fully with CM 41-01 is seriously undermining its ability to carry out robust stock assessments in the exploratory fisheries. Indeed, such failure threatens the integrity of the entire science-based

assessment process upon which the sustainable management of CCAMLR fisheries depends. This threat is magnified in New Zealand's view by the Republic of Korea's intended substantial increase in fishing effort, especially in Subareas 88.1 and 88.2 and in the 2010/11 season for which it has notified six vessels, 50% more than any other Member, including the *Insung No. 1*, the *Jung Woo No. 2* and the *Jung Woo No. 3*.

New Zealand also recalls the Scientific Committee's advice (SC-CAMLR-XXIX, paragraph 3.137) that there is no reason why a high tag overlap statistic is not achievable by all vessels in all exploratory fisheries and is very concerned that the Commission has proved unable to effectively address this issue despite the clear advice provided by the Scientific Committee. New Zealand would also recall that this is not an issue about education but about will. Finally, while New Zealand is pleased the Commission has now set a mandatory tag overlap benchmark in CM 41-01, Annex C, this will be to no avail if the Commission continues to fail to address such blatant and persistent non-compliance with its conservation measures.'

12.36 Australia made the following statement:

'Australia shares the concerns over the performance of vessels in exploratory fisheries, particularly in the difficulties achieving the research requirements that underpin the assessment and development of exploratory fisheries. Australia is very concerned about the expansion of effort in these fisheries and the lack of accompanying commitment to delivering useful research outcomes. Australia notes that exploratory fisheries are just that, exploratory, and should not be assumed to be precautionary or sustainable if they continue for many years without satisfactory research. As indicated in paragraph 11.12, Australia considers it important to have advice from the Scientific Committee on the requirements to be met for data-poor fisheries, including vessel requirements. Australia encourages all Members to be involved in these discussions because next year it is expected that the Commission will take full account of the advice of the Scientific Committee and take appropriate steps to manage effort in these fisheries.

Australia would like to ask the Commission to agree to request the Scientific Committee, through its work on data-poor exploratory fisheries, to consider options for determining effort levels in exploratory fisheries in order that such fisheries can remain precautionary and sustainable in the long term. Also, Australia would like to ask that the Commission agrees that notifications next year for exploratory fisheries under CM 21-02 be considered with respect to the advice from the Scientific Committee next year, and that such notifications will not be automatically considered according to the conditions for exploratory fisheries agreed for this coming season.'

12.37 The USA stated that it shares the view that failure to tag fish in accordance with recommendations from the Scientific Committee undermines the advice that the Commission must have in order to achieve the objectives in Article II of the Convention. It noted that the Scientific Committee has provided clear advice that 'a high overlap statistic was achievable by all vessels' (SC-CAMLR-XXIX, paragraph 3.137) accompanied by a table of indicative tagging rates that would enable vessels to achieve high overlap (SC-CAMLR-XXIX, Table 6). The USA thought that the failure of some vessels to achieve this high overlap is a serious problem for this organisation and needs to be addressed head on. In the USA's view it

is absolutely essential that Members and their vessels achieve necessary tagging rates and overlap, and if vessels do not, this should form the basis for denying specific vessels future access to new and exploratory fisheries.

12.38 The UK made the following statement:

‘The UK shares many of the concerns set out by New Zealand, Australia and the USA, and expresses its disappointment that despite the clear over-notification of fishing effort in subareas and divisions with limited catch limits, we have been unable to reach agreement either on the principle, or the process as to how we might reduce that effort.

The UK agrees that this is an extremely serious issue for the Commission. Not just this year, but into the future. It demonstrates an unfairness among Members, between those that invest in the scientific effort needed to underpin our decision-making and those who appear to be motivated solely by economic gain.

In this regard, the UK expresses extreme disappointment that Korea has not been able to demonstrate to this Commission either that it has prioritised scientific requirements in authorising its vessels, or that it takes seriously the concerns of the over-capacity in fishing effort notified for the next season. We now appear to be held hostage by economic imperatives – and, in the UK’s view, the strong CCAMLR principle of science underpinning each and every conservation measure is under question.

The UK agrees to the exploratory fisheries notifications reluctantly. As highlighted in the Performance Review, the UK thinks it is now of paramount urgency that the Commission addresses the issue of over-capacity of effort and seriously considers limiting exploratory fishing in each and every subarea and division by Member. We already agree to no more than one vessel per country at any one time in Subarea 48.6. We should urgently look at similar provisions for all other exploratory fishing conservation measures, with the number of vessels from each country commensurate with the precautionary catch limits, and with priority given to scientific contribution, not to economic gain.’

12.39 The Republic of Korea made the following statement:

‘Korea acknowledges the criticisms of the low achievement in the tag overlap statistics, even though it is not related to a non-compliance. With this acknowledgement, Korea has withdrawn one vessel from Subarea 48.6 and three vessels from Division 58.4.2. The withdrawals include the *Insung No. 1* which was the centre of criticism from Members. The withdrawal decision was made to warn the owner of the *Insung No. 1*. Korea asks Members to understand its intention and advises that it was not appropriate to block the vessel from exploratory fishing. During this week, Korea has repeatedly expressed its willingness to improve on scientific data collection to contribute to the robust stock assessment for the better achievement of the objectives of CCAMLR. In closing, Korea extends its sincere appreciation to all Members for understanding its position, especially to New Zealand.’

Icefish

12.40 The Commission revised the limits on the fishery for *C. gunnari* in Subarea 48.3 (paragraph 4.49). The revised catch limit for *C. gunnari* was 2 305 tonnes in 2010/11. In addition, the type of alternative string material for use in net binding (CM 42-01, footnote 3(i)) was amended to 'organic/biodegradable'. Other elements regulating this fishery were carried forward and CM 42-01 (2010) was adopted.

12.41 The Commission revised the limits on the fishery for *C. gunnari* in Division 58.5.2 (paragraph 4.49). The revised catch limit for *C. gunnari* was 78 tonnes in 2010/11. Other elements regulating this fishery were carried forward and CM 42-02 (2010) was adopted.

Krill

12.42 The Commission recalled that no notification had been made for the exploratory fishery for krill in Subarea 48.6 in the forthcoming season (paragraph 11.37), and the limits in CM 51-05 (2009) were not renewed for 2010/11. However, the requirements of the general measure for exploratory fisheries for krill were carried forward to 2010/11 in order to provide guidance to Members who may wish to notify for exploratory fisheries for krill in 2011/12. CM 51-04 (2010) was adopted.

Crab

12.43 The Commission carried forward the limits for the fishery for crab in Subarea 48.3 in 2010/11 and CM 52-01 (2010) was adopted. The Commission noted that any Member wishing to participate in this fishery is required to notify their intention at least three months in advance of starting fishing (CM 52-01, paragraph 3).

12.44 The Commission recalled that no notification had been made for the exploratory fishery for crab in Subarea 48.2 or the exploratory fishery for crab in Subarea 48.4 in the forthcoming season (paragraph 11.37). The limits in CMs 52-02 (2009) and 52-03 (2009) were not renewed for 2010/11.

New resolutions

12.45 The Commission adopted a resolution which seeks a reaffirmation by Members of their commitment to prevent, deter and eliminate IUU fishing in the Convention Area in accordance with the conservation measures in force (Annex 6, paragraph 2.48). Resolution 32/XXIX (Prevention, deterrence and elimination of IUU fishing) was adopted.

Other measures considered

Port Inspection Scheme

12.46 The Commission considered a proposal to amend CM 10-03.

12.47 In introducing the proposal, the EU and the USA highlighted its importance in relation to IUU fishing. They also noted that it would strengthen CM 10-03 and make CCAMLR's Port Inspection Scheme consistent with those that will be required under the FAO Port State Measures Agreement (PSMA) adopted by consensus in November 2009.

12.48 The USA noted the observation made by the PRP that 'until all Port States implement similar and consistent arrangements with respect to foreign fishing vessels entering their ports, loopholes will continue to exist'. The USA expressed the view that, in addition to addressing the loopholes identified by the PRP, the amendments that it had proposed would facilitate compliance with the existing requirements of CM 10-03, as well as the provisions of CMs 10-06 and 10-07 that call on Members to restrict port entry and access to port services to vessels on CCAMLR's IUU Vessel Lists. The proposal set forth minimum requirements regarding entry into port and access to port services, conduct of inspections and training of inspectors, and follow-up actions that are consistent with those set forth in the FAO PSMA.

12.49 The USA and the EU noted that, although several Members have already signed the FAO Agreement, one Member had expressed concern that the amendments being proposed would prematurely and inappropriately implement that agreement through the mechanism of a CCAMLR conservation measure. Other Members disagreed and noted that, although the amendments proposed would bring the obligations on Port States under CM 10-03 into greater consistency with those that will follow from the FAO Agreement, the scope of the proposal remains confined to those resources and activities under the competence of CCAMLR.

12.50 The EU noted that the PSMA had been negotiated over the past three years and that, given the time it will take to ratify the PSMA, there was an urgent need to close the loopholes in the CCAMLR system now to ensure that it is effective in combating IUU fishing. The EU noted that other organisations had adopted similar measures and reminded Members that it was proposing that implementation in CCAMLR be deferred until June 2012. In addition to being a recommendation of the PRP, the proposal would include vessels carrying krill.

12.51 The EU once again stated that without robust control of ports and markets, CCAMLR would never be able to fully address the issue of IUU fishing, as the IUU catches would continue to be landed and traded. The EU urged Members to fully discharge their responsibilities in ensuring the effectiveness of CCAMLR in the conservation of marine living resources and to adopt the proposal.

12.52 Most Members expressed their full support for the proposal. These Members believed that strengthening port control would close existing loopholes and assist with prevention and deterrence of IUU fishing. Some Members also expressed the further view that adoption of a stronger port inspection measure was important for the credibility of CCAMLR and relevant to its work.

12.53 A number of Members urged all CCAMLR Members to ratify the PSMA and to exert political will by engaging constructively in 2011 to adopt amendments to CM 10-03 at CCAMLR-XXX. Some Members also expressed the view that non-ratification of the PSMA did not prevent its provisions from being adopted by CCAMLR.

12.54 Germany noted that the EU IUU Regulation No. 1005/2008 had imposed a significant administrative burden on EU Member States. Germany believed that CCAMLR should not squander these efforts by leaving other loopholes open.

12.55 While thanking the USA and the EU for their proposal, Argentina noted that the text mirrors concepts and criteria deriving from the FAO PSMA of 2009, which is not yet in force. It recalled that some Members had already underscored that the PSMA remains under consideration by their competent authorities and that more time to reflect on the proposal is needed. It further noted that States are entitled to decide whether and when they provide their consent to be bound by an agreement. The acceptance of such concepts and criteria in the framework of CCAMLR would imply the circumvention of the necessary steps leading to domestic approval.

12.56 Namibia and South Africa expressed their thanks to the EU and the USA for their proposal, particularly its intention to include species other than toothfish, and were pleased to see that the proposal included the principles of the PSMA. Namibia believed that the proposal would strengthen the ability of the Port State to exert more control over vessels. South Africa noted that it was fully aware of the problem of IUU fishing and therefore supported the PSMA in principle but had not yet ratified it and would therefore need more time to fulfil its requirements.

12.57 ASOC expressed its full support for the proposal and thanked the co-sponsors for introducing it. ASOC reminded Members of a gap analysis that it had conducted which explained the rationale for strengthened Port State measures. ASOC expressed disappointment that no progress had been able to be made on the proposal this year and strongly encouraged the co-sponsors to revisit it in future.

12.58 The USA and the EU thanked those Members which had supported the proposal and expressed disappointment that the Commission was not able to make more progress on this issue at this meeting. The USA and the EU indicated that they were committed to continue work on this issue.

12.59 The Commission encouraged Members to continue work on this matter during the intersessional period.

Scheme to promote compliance

12.60 The Commission considered an intersessional process for the delisting of vessels from the IUU Vessel Lists in order for the lists to be updated more frequently, as recommended by the PRP (Annex 6, paragraph 2.49). Such a procedure would apply to the IUU Vessel Lists in CMs 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). The Commission was unable to finalise the process, and encouraged Members to continue work on this matter during the intersessional period.

12.61 In presenting these proposals, the EU stated that they addressed a recommendation of the PRP, which stated that ‘CCAMLR should review the process (including the need for consensus), timing and frequency with which vessels are added or removed from the IUU vessel list’, so that the lists are updated more frequently, and that the discussions under Item 9 concerning the delisting of two Chinese-flagged IUU vessels rendered them even more relevant and timely. The EU also noted that such a procedure already features in many organisations, including ICCAT, IOTC and WCPFC, to which many CCAMLR Members are Contracting Parties.

Market-related measure

12.62 The Commission considered a proposal for the adoption of a market-related measure (CCAMLR-XXIX/39).

12.63 In reintroducing its proposal to the Commission, the EU recalled that it had been proposing the measure over a period of five years. The EU noted that, despite considerable progress in respect of the control of nationals, IUU fishing in the Convention Area did not appear to be declining, as evidenced by the considerable increase in IUU catches in 2009/10 compared with last season. The EU expressed the view that CCAMLR appeared to be unable to further control IUU fishing and was therefore not fulfilling the objectives of Article II of the Convention and, in turn, the Antarctic Treaty, and the responsibility for this rested with those Members which were blocking the adoption of a market-related measure. The EU believed that control of ports and markets was an essential element in combating IUU fishing. The EU also noted that delegations which had objected to the proposal in SCIC had adopted similar proposals in other organisations and that these organisations had examined and successfully implemented market-related measures.

12.64 Noting that market measures had been adopted by other organisations, several Members strongly supported the adoption of such measures by CCAMLR. These Members were of the view that there were no substantive legal barriers to its adoption. These Members believed that three essential steps in combating IUU fishing were the control of ports, the control of markets and the control of nationals. These Members urged CCAMLR to redouble its efforts to control the trade of IUU-caught toothfish as it was fast exhausting other solutions.

12.65 Noting also that a proposal for a Port State measure and a previous proposal for improving the System of Inspection had not been agreed by consensus, some Members expressed regret that CCAMLR was again failing to take critical measures against IUU fishing. The USA reiterated its support for the proposal and regretted that it, like the proposals on Port State measures and the System of Inspection, all of which were designed to combat IUU fishing, had been blocked.

12.66 Argentina expressed its disappointment on noting that no response to the legal considerations it provided in 2008 and 2009 was received from those Members who offered to

do so. Argentina stated that it felt it was very difficult to support the adoption of procedures it considered not to be consistent with international law. The reasons for that position have already been thoroughly explained.

12.67 Argentina stated that one need only read the Performance Review of certain RFMOs to verify that IUU fishing is, in some cases, mainly carried out by the very Members of the RFMO. In some cases, up to 50% of the species in the purview of the RFMO are overexploited legally. The practical consequences were that the resources entrusted to the RFMO are exploited by their Members as if they were their legitimate owners. Hence, this was clearly an example not to be followed by CCAMLR. On the other hand, Members should carefully analyse, on a case-by-case basis, what best serves the objectives of the Convention.

12.68 Argentina stated that, from a practical point of view, the elaboration of an IUU States list, in addition to not being compatible with the spirit of CCAMLR and with international law, simply leads to confusion as to the actual flag of each vessel. The valuable information provided by Spain regarding the vessel *Tchaw* and the diplomatic demarches informed by the EU, are proof of the speed at which reflagging can take place, as well as of the use of unauthorised flags by IUU vessels. This creates uncertainty in respect of the offending vessel's nationality, in the same way that sighting reports cannot conclude the nationality of the crew from the language used in radio communications.

12.69 Moreover, Argentina noted that CM 10-08 has begun to bear some fruit even though it was not used to its fullest extent to 'effectively deprive participants of the benefits' and 'dissuade further illegal activities'. For example, the surplus weight retained by the vessel by not tagging large specimens is indeed an illegal commercial benefit. It would be appropriate to calculate the weight illegally retained in order to act accordingly. Furthermore, while it is satisfactory to note that sanctions have been applied to an IUU vessel owner, Argentina could not help noticing that a single landing from an IUU vessel is valued at approximately €1.5 million. Argentina understood that the fine had not deprived the responsible party of its benefits and that the sanctioned vessel continues operating under a different name. The application of CM 10-08 to individuals is much simpler than applying it to beneficial owners, which usually are legal persons. This is precisely the point where CCAMLR's best efforts should be directed.

12.70 Argentina also stated that, by means of a somewhat perverse mechanism, the very capitals that finance and benefit from the IUU fishing activity that might lead Members to include a State in a list for presumably being unable to control its fleet, are the same capitals that would finance and benefit from the exploitation of the resources whilst resorting to other flags. In summary, Argentina understood that the mechanism currently provided for in CM 10-08, if applied with the necessary determination, would provide a solution to the problem before CCAMLR. Argentina was of the view that the EU proposal would require unproductive efforts in addition to being, in parallel, incompatible with international law.

12.71 Namibia and South Africa advised the Commission that trade-related consultations within their respective countries were still ongoing and the matter was also on the agenda of the Southern African Development Community (SADC) for deliberation by ministers responsible for fisheries. They therefore advised the Commission that they were not currently in a position to make a final decision on the proposal.

12.72 In thanking all Members which had supported its proposal, the EU reiterated its willingness to consult with any Member in any future consideration of market-related measures.

12.73 Many Members indicated that they would continue work on this matter during the intersessional period.

Marine Protected Areas

12.74 Australia made the following statement:

‘Australia would like to thank many Members for substantially progressing the conservation measure to establish CCAMLR MPAs individually and in a representative system of Antarctic MPAs.

Australia considers MPAs would contribute to the objectives of Article II according to the mechanisms available in Article IX where conservation measures, formulated on the basis of the best scientific evidence available pursuant to Article IX.1(f), may designate the opening and closing of areas, regions or sub-regions for the purposes of scientific study or conservation, including special areas for protection and scientific study pursuant to Article IX.2(g).

Australia is very disappointed that this draft conservation measure has not been agreed at this meeting given

- (i) that in 2005 the Commission endorsed the Scientific Committee’s advice arising from the 2005 Workshop on Marine Protected Areas (CCAMLR-XXIV, in paragraph 4.12; SC-CAMLR-XXIV, paragraphs 3.51 to 3.65);
- (ii) the high priority given to the establishment of a system of MPAs by the CCAMLR Performance Review Panel where the Review Panel recommended that CCAMLR take steps towards the designation of MPAs, including high-seas areas within CCAMLR waters, as a matter of urgency noted by the Commission (CCAMLR-XXVII, paragraph 17.9);
- (iii) the agreement by the Commission to develop a system of MPAs according to the WSSD objective of developing a representative system of MPAs by 2012 (CCAMLR-XXVIII, paragraph 7.19).

Australia believes that the Commission is in agreement on

- (i) the variety of objectives to which CCAMLR MPAs could contribute, including a representative system, having endorsed these objectives in 2005, and noting that the development of MPAs should be consistent with the CAMLR Convention and international law generally;

- (ii) the requirements for individual CCAMLR MPAs that should be considered when adopting an MPA, noting that specific requirements for each MPA can only be determined once the specific objectives have been determined, which may be for conservation and/or scientific reasons;
- (iii) the need to adopt mechanisms that ensure that fishing, research and other activities do not impact on the specific values of CCAMLR MPAs;
- (iv) the requirements for review;
- (v) the need for developing relationships with other bodies that might assist in conserving Antarctic marine living resources.

Notwithstanding the discussions over the last two weeks, Australia does not consider that there are any fundamental disagreements on what is needed in this conservation measure. That said, Australia does not agree that the proponent of an MPA should be solely responsible for the delivery of its science or facilitating its objectives. Australia believes in the CCAMLR community sharing in the aspirations for delivering the conservation of Antarctic marine living resources. With this belief, Australia has circulated a revised draft, restoring some text for further discussions, and hopes that it can work with Members to develop words to achieve these agreed aspirations and agreed intentions in the coming year. Australia believes that the adoption of this measure next year will provide a solid and transparent foundation for establishing a system of CCAMLR MPAs by 2012.'

12.75 New Zealand made the following statement:

'New Zealand wishes to congratulate Australia on its heroic efforts on its conservation measure to establish a representative system of MPAs. While it is unfortunate that we have not been able to reach consensus on the measure, the debate has been very rich and we are now much better informed on where we need to go with respect to establishing such a network. New Zealand thanks Australia for their final draft of the measure, and looks forward to working on this intersessionally with Australia. New Zealand considers it would be fitting to be able to adopt such a measure at CCAMLR's 30th anniversary in 2011.'

12.76 The UK joined New Zealand in congratulating Australia in its efforts, and looked forward to continuing to work on this matter during the intersessional period.

General

12.77 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.

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