

OBSERVATION AND INSPECTION

7.1 The Chairman of the Standing Committee on Observation and Inspection (SCOI), Dr W. Figaj (Poland), introduced the report of the Committee. The report of SCOI is appended as Annex 5 and was endorsed in its entirety by the Commission.

7.2 The Chairman of SCOI expressed his gratitude to all Members for their constructive debate during the serious matters under consideration. He thanked Ambassador J. Arvesen (Norway) for his support and guidance throughout the meeting, and in addition, thanked the Secretariat and especially its Science Officer for his excellent work in the preparation of the meeting documents and the report of the meeting.

7.3 At the beginning of the discussions, Norway expressed its deep concern about evidence that illegal fishing in the CCAMLR Convention Area was apparently increasing and appeared to have reached alarming proportions.

7.4 Norway further acknowledged that some improvements to the System of Inspection had been agreed to, but expressed its disappointment that it had not been possible to reach consensus on either a vessel notification system or the introduction of an automated VMS.

7.5 Australia associated itself strongly with the statement made by Norway.

7.6 The UK also strongly endorsed the statement by Norway. The inability of certain Flag States to deal effectively with infringements of conservation measures by their vessels had resulted in quite unacceptably high levels of illegal fishing. This could not continue if the integrity of CCAMLR is to be maintained. This required practical measures such as mandatory vessel notification and satellite-linked monitoring systems, such as proposed in 1993 (CCAMLR-XII, paragraph 6.17). The legal objections to such measures expressed at the present meeting by some Members (Annex 5, paragraphs 2.41 to 2.45) were baseless. There was nothing in general international law, nor the law of the sea, which presented an obstacle to agreement on such measures by the Members of the Commission. The amendment to Article III of the System of Inspection adopted at the present meeting was an example of agreement by Members to a measure affecting the freedom of navigation of vessels of Members.

7.7 Several other delegations also made general comments with regard to the SCOI report, its recommendations and conclusions.

7.8 Chile argued that the matter under consideration was out of proportion and context. It was to the honour of CCAMLR that the problem of illegal fishing had been so thoroughly

considered, that appropriate measures were being undertaken by the Flag States and that additional and exceptional measures were being considered (e.g., inspections in the high seas and presumptions on fishing activities).

7.9 Chile stated that illegal fishing in Subarea 48.3, while important, was not the main problem in the operation of CCAMLR and was presently being exaggerated. Measures were being taken and Chile, as a Flag State, had a clear conscience on having fully complied with its obligations (i.e., through the judicial process of six presumptive infractions and severe punishment of two of them). In relation to modifications to the Law of the Sea and specifically to the freedom of the high seas, CCAMLR has gone further than any other agreement on limiting the latter. Reducing such freedom to practical non-existence could be deemed to be contrary to the Law of the Sea and there was no ground, in practice, to envisage such over-powering measures and changes.

7.10 Chile further stated that the most important problem was the simultaneous operation in practically the whole area of the Convention of two regimes, two sets of rules - national and those adopted by CCAMLR. This, in practice, did not correspond to the objectives of CCAMLR, based on the ecosystem approach for the conservation of the whole Antarctic marine ecosystem south of the Antarctic convergence. Chile said that further consideration was required in relation to this matter.

7.11 Argentina shared the views of Chile and recalled what was said in paragraphs 2.41 to 2.45 of the SCOI Report. It also disqualified comments made under paragraph 7.6 above. The Delegation of Chile shared this view.

7.12 In addition, Argentina further recalled its commitment to contribute to strengthening the CCAMLR System of Inspection and the CCAMLR Scheme of International Scientific Observation, and to the recommendation that Flag States exert their jurisdiction and take steps to prosecute and impose sanctions on vessels of their flag which infringe CCAMLR Conservation Measures.

7.13 On the other hand, Argentina underlined the substantial difficulty which arose when it was intended to devise a system in a manner which, in its view, was incompatible with the Law of the Sea Convention, favouring relinquishment of long-established Flag State rights in favour of an international organisation and/or third parties.

7.14 Finally, Argentina expressed its view that it was often forgotten that CCAMLR was agreed upon as a conservation instrument within the framework of the Antarctic Treaty System.

Its membership, nature and content were clearly different from those of a fisheries commission or organisation.

7.15 The US emphasised that the issue of fishing occurring in the Convention Area in contravention of CCAMLR Conservation Measures was a serious problem threatening the Commission Members' collective ability to implement the Convention. The US drew the attention of the Commission to the reports of illegal fishing it submitted to the Commission (CCAMLR-XIV/BG/28 and SCOI 95/5). The US stated its strong support for an automated VMS and made clear that it believed such a system was entirely consistent with international law. The US also took the opportunity to remind the Commission of the importance of scientific observers and noted the Scientific Committee's call for the placement of two observers on fishing vessels whenever possible.

7.16 In the Commission's conclusion of general aspects of the SCOI report, Brazil said it had gone on record as being in favour of measures which would strengthen CCAMLR and as being against initiatives which could either, in the short- or longterm, weaken it. It believed that, by weakening CCAMLR, by altering its nature or objectives, the whole of the Antarctic Treaty System was in focus. Situations of a contentious character should be seen as striking at the heart of the Antarctic system - a system whose very basis was built on international cooperation. By remaining passive or even condoning such situations, the Commission takes upon itself the responsibility for any serious consequences for the future of the system. These were matters which the Commission should, sooner rather than later (and in this respect Brazil agreed with Chile), consider.

7.17 The Commission's further deliberations on the SCOI report were considered section by section.

Operation of the System of Inspection and Compliance with Conservation Measures

7.18 The Commission noted that there were no objections to the Conservation Measures adopted at CCAMLR-XIII which therefore became binding on 7 May 1995.

7.19 Australia drew the attention of the Commission to the reports of scientific observers on board longline vessels in Subarea 48.3, where it was noted that not all vessels complied in full with Conservation Measure 29/XIII to reduce the incidental mortality of seabirds. The Commission urged Members to make every possible effort to ensure that vessels of their flags comply in full with all conservation measures.

7.20 The US advised the Commission that new information on sightings of fishing vessels in Subarea 48.3, as mentioned in paragraph 1.24 of the SCOI report, had been received and distributed to delegates as document CCAMLR-XIV/BG/28. The UK advised the Commission that it had received information on sightings of three vessels on the night of 20/21 October 1995 in the vicinity of Shag Rocks.

7.21 In considering the activities of non-Member States in the Convention Area, the Commission requested the Executive Secretary to write to the Government of Latvia to invite it to consider joining CCAMLR on the grounds of its fishing activities in the Convention Area. The Executive Secretary was also directed to seek clarification of the origin of the FV *Thunnus*, reported as being in the Convention Area (Annex 5, paragraphs 1.44 and 1.45), and write to the Flag State concerned.

Improvements to the System of Inspection

7.22 The Commission adopted the recommendation of SCOI (Annex 5, paragraph 2.13) that the first sentence of Article III of the System of Inspection be replaced with the following sentence:

‘Article III. In order to verify compliance with Conservation Measures adopted under the Convention, Inspectors designated by Members shall be entitled to board a fishing or fisheries research vessel in the area to which the Convention applies to determine whether the vessel is, or has been, engaged in scientific research, or harvesting, of marine living resources.’

7.23 France and South Africa reiterated their positions regarding the non-application of the System of Inspection to waters adjacent to the Crozet and Kerguelen, and Prince Edward Islands, respectively, in accordance with the statement made by the Chairman of the Conference on the Conservation of Antarctic Marine Living Resources on 19 May 1980.

7.24 The Commission noted the advice from Australia that duly-designated CCAMLR inspectors would be permitted to board Australian vessels fishing in that area of Australia’s Fishing Zone around Australia’s external territory of Heard Island and McDonald Islands which is within the Convention Area.

7.25 The Commission stated its understanding that the System of Inspection applied to flag vessels of all Members of the Commission and where appropriate, Acceding States. It was decided that this should be emphasised in the *Inspectors Manual*.

7.26 The Commission adopted the recommendation of SCOI (Annex 5, paragraphs 2.19) that the following new Article should be added to the System of Inspection:

‘Article IX bis. A fishing vessel present in the area of application of the Convention shall be presumed to have been engaged in scientific research, or harvesting, of marine living resources (or to have been commencing such operations) if one or more of the following four indicators have been reported by an inspector, and there is no information to the contrary:

- (a) fishing gear was in use, had recently been in use or was about to be used, e.g.:
 - nets, lines or pots were in the water;
 - baited hooks or thawed bait were ready for use;
 - log indicated recent fishing or fishing commencing;
- (b) fish which occur in the Convention Area were being processed or had recently been processed, e.g.:
 - fresh fish or fish waste were on board;
 - fish were being frozen;
 - from operational or product information;
- (c) fishing gear from the vessel was in the water, e.g.:
 - fishing gear bore the vessel’s markings;
 - fishing gear matched that on the vessel;
 - log indicated gear in the water;
- (d) fish (or their products) which occur in the Convention Area were stowed on board.’

7.27 In adopting this new Article, the Commission decided that it should not at the moment apply to krill, but should a closed season or area be declared for krill, appropriate modifications to the above indicators should be made by the Commission to take account of the particular circumstances of krill harvesting and processing.

7.28 The Commission approved the new inspection report form prepared by SCOI (Annex 5, Appendix III) together with the following amendments to the System of Inspection dealing with a procedure for handling photographs and/or video footage taken in the course of an inspection (Annex 5, paragraph 2.28):

Article VI(d)

‘Inspectors may take photographs and/or video footage as necessary to document any alleged violation of Commission measures in force.’

Article VIII(d)

‘The Inspector shall provide a copy of the completed inspection form along with copies of photographs and video footage to the designating Member at the earliest opportunity.’

Article VIII(e)

‘The designating Member shall, as soon as possible, forward a copy of the inspection form, along with two copies of photographs and video footage to the CCAMLR Executive Secretary who shall forward one copy of this material to the Flag State of the inspected vessel.’

7.29 Members were reminded of their obligations under Article IV of the System of Inspection to inform the Commission, by 1 May each year, of their flag vessels intending to harvest marine living resources in the Convention Area in the following season. Members were also reminded that the Commission must be advised as quickly as practicable of any additions to, or deletions from, this list during the fishing season. The Secretariat was requested to inform Members on a monthly basis, as from the end of the Commission meeting, of the current status of the list of vessels.

7.30 The Commission noted that SCOI had been unable to reach a consensus on either a vessel notification system or a satellite-based VMS for Commission consideration during the 1995 meeting.

7.31 The Commission also noted that Members had explained their positions with regard to these systems at the meeting of SCOI and these were described in the SCOI report (Annex 5, paragraphs 2.37 to 2.66) and in paragraphs 7.4 to 7.16 of the present report.

7.32 Japan noted that at its 1994 meeting SCOI had concluded that at present there was neither need nor justification to introduce a VMS for the krill fishery. Japan noted its understanding that the same conclusion would logically apply to the vessel notification and hail system for the reasons stated in the SCOI report (Annex 5, paragraph 2.51).

7.33 The Commission summarised, *interalia*, the following points on which Members had expressed differing views with regard to the application of a vessel notification system and/or an automated VMS to the CCAMLR Convention Area:

- practical, administrative and financial aspects of the implementation of a vessel notification system and a VMS;
- compatibility of the vessel notification and monitoring approaches with general international law and, in particular, with UNCLOS 1982¹;
- compatibility of the vessel notification and monitoring requirements with national jurisdictions of CCAMLR Members; and
- compatibility of the vessel notification and monitoring approaches with CCAMLR objectives *vis-à-vis* the objectives of a regional fisheries organisation.

Operation of the Scheme of International Scientific Observation

7.34 The Commission welcomed the excellent efforts of Argentina, Chile, Russia, Ukraine and USA in arranging for scientific observers to be placed on board each of the 13 vessels fishing for *D. eleginoides* in Subarea 48.3 and one trawler fishing for krill in Area 58 in the 1994/95 season.

7.35 The Commission endorsed the advice of the Scientific Committee on Scientific Observation (SC-CAMLR-XIV, paragraphs 9.1 to 9.12). In particular, it recognised that the Scheme of International Scientific Observation was often the only means to obtain reliable data and information from fisheries and effectively educate vessels' crews in the use of measures mitigating the incidental mortality of seabirds.

7.36 The Commission recollected that it regulated fisheries in which international scientific observers or national observers were mandatory and that, wherever possible, the presence of

¹ Draft agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

two scientific observers was recommended. It endorsed the recommendation of the Scientific Committee (SC-CAMLR-XIV, paragraph 9.5) that 100% International Scientific Observer coverage should become mandatory in other CCAMLR finfish fisheries.

7.37 The Commission also endorsed the Scientific Committee's advice concerning the observation of fisheries for *D. eleginoides* in waters adjacent to the Convention Area (SC-CAMLR-XIV, paragraph 9.9) and drew the attention of Members fishing for *D. eleginoides* outside the Convention Area to the benefits of a high degree of observer coverage.

7.38 The Commission encouraged Members to ensure that crews of vessels receiving International Scientific Observers be made aware of their responsibilities and obligations towards those observers under the CCAMLR Scheme of International Scientific Observation (SC-CAMLR-XIV, paragraph 9.10).

7.39 The Commission also recommended that the fate of data and samples, and the arrangements for their analysis, should be considered at the initiation of observer arrangements (SC-CAMLR-XIV, paragraph 9.10). Information on the fate of samples should be included in the summary reports submitted to the Secretariat.

Future Work

7.40 Noting the lack of consensus on the questions of vessel notification and VMS, the UK proposed two ways of examining the general issue of notification:

- (i) that Members who voluntarily introduce VMS on their vessels operating in the Convention's waters should bring to the next meeting of the Commission reports of their experiences in terms of costs, effectiveness, etc.; and
- (ii) that to assist in addressing the legal obstacles suggested by some Members to mandatory VMS and vessel notification, intersessional work by correspondence between interested Members be considered.

7.41 The US supported this proposal. The US also called upon Members to voluntarily install VMS transceivers on at least a representative subset of their vessels fishing in the Convention Area in 1995/96 and to report the results at the next meeting.

7.42 Chile and Argentina emphasised again that the matter of further measures of inspection was not only of a legal nature, but had also to be considered on the grounds of such measures being adequate, commensurate or, indeed, necessary. They also made the point that the

suggestions by the UK were not the only points to be considered regarding the improvement of the operation and management of the System of Inspection.

7.43 The Commission noted the differing positions of delegations on the legal implications of the UNCLOS Agreement and the Agreement to Promote Compliance with Internationally Agreed Conservation and Management Measures by Vessels Fishing on the High Seas, in relation to the Convention on the Conservation of Antarctic Marine Living Resources expressed in the report of SCOI. The Commission agreed that Members could consult on the relevance of and the relationships among these agreements, as well as on other items and issues under consideration.

7.44 It was agreed that measures needed to improve the CCAMLR systems of observation and inspection should be kept under continuing review.