

ILLEGAL, UNREGULATED AND UNREPORTED FISHING IN THE CONVENTION AREA

5.1 The Commission was addressed on behalf of Australia by Senator, the Honourable Robert Hill, the Australian Minister for the Environment and Heritage.

5.2 Senator Hill stressed the high priority the Australian Government placed on the work of the Commission in seeking to address a wide range of vital conservation issues facing the Antarctic and sub-Antarctic regions. He welcomed the presence of Mauritius and Namibia as observers and strongly encouraged their early accession to the Convention.

5.3 Senator Hill stressed the urgent need for concerted and decisive action by CCAMLR Members to stop illegal, unreported and unregulated fishing in the Convention Area. He noted with grave concern the report by CCAMLR's Scientific Committee on the virtual commercial extinction of some stocks of *Dissostichus* spp. due to illegal fishing. He also noted that illegal fishing was continuing to threaten remaining viable populations of *Dissostichus* spp. and was killing a large number of seabirds. Senator Hill urged CCAMLR Members to adopt a range of effective measures to combat these illegal activities, including a catch certification scheme and related measures to prevent trade in illegally caught fish. A failure to act on such proposals would mean that CCAMLR would be failing in its primary objective of conserving Antarctic marine living resources. It would also undermine the credibility of CCAMLR as an effective international organisation.

5.4 The Chairman of SCOI reported on the findings of that Committee with regard to illegal, unregulated and unreported fishing in the Convention Area during 1997/98 (Annex 5, paragraphs 2.1 to 2.24). In accordance with Articles X and XXII of the Convention, Members reported 45 sightings of fishing vessels of non-Contracting Parties. The Flag States involved were Seychelles, the Faroe Islands and Belize. The Flag States and ports of registration of a number of vessels were not identified. The effectiveness of measures adopted by the Commission last year was considered, several new conservation measures proposed by Members were discussed and the Committee recommended them to the Commission for further consideration and possible adoption.

5.5 The Commission also noted that the Scientific Committee had recommended that the Commission take the most stringent measures possible to combat illegal, unregulated and unreported fishing in the Convention Area. This recommendation was based on the following conclusions on the potential impact of unregulated fishing (SC-CAMLR-XVII, paragraphs 2.8 to 2.14 and 4.48 to 4.50):

- (i) there is a distinct possibility that stocks of *D. eleginoides* will continue to be depleted to extremely low levels;
- (ii) the long-term yield of the targeted stocks of *D. eleginoides* is likely to be compromised in the future by ineffective control of illegal, unregulated and unreported fishing; and
- (iii) the potential levels of incidental mortality of several species of seabirds in longline fisheries were found to be unsustainable for the populations of these species.

5.6 Statements on the subject were made by the European Community, Norway, New Zealand, Chile and South Africa.

5.7 The European Community stated that:

‘The continuing high level of illegal and unregulated fisheries conducted both by vessels from Contracting Parties and non-Contracting Parties was alarming. Such activities, prevalent now over several years, undermine the effectiveness of

CCAMLR's measures and the level of such destructive fisheries constitute a serious challenge to CCAMLR and the Antarctic ecosystem.

Last year's meeting signalled the first steps to redress this situation but we must now build on that with separate but inter-related measures, namely, inspections by Contracting Parties on all their vessels licensed to fish in the Convention Area; the introduction of a mandatory VMS; the establishment of cooperative mechanisms between Parties to improve on compliance; compulsory identification marking on vessels and fishing gear; the development of this organisation's relations with non-Contracting Parties by inviting them to adhere to CCAMLR and, if not, to cooperate constructively with the organisation.'

5.8 Norway stated that:

'The Report of the Scientific Committee has again brought before us the alarming picture of overfishing, illegal and unreported.

Norway is satisfied that at the Sixteenth Meeting we were able to adopt a series of new measures directed at the elimination of illegal, unregulated and unreported fishing both by vessels flying flags of CCAMLR Members and flags of non-Contracting Parties as well as measures addressed to the role of Port States. We may conclude that the Sixteenth Meeting set us on the right track, giving an active direction to our efforts. But also part of our evaluation is the strong feeling that the situation calls for further collective measures by the States within CCAMLR, measures by Coastal States and new steps vis-a-vis non-Contracting Parties to enhance enforcement and compliance with existing and new measures of resource management.

Norway would like to welcome as most positive and promising the participation at this meeting of representatives from Namibia and Mauritius who are here in response to our invitation. My delegation appreciated very much the constructive and substantial statement made by Namibia and would welcome Namibia and Mauritius as new Members. We shall need their cooperation in securing compliance with conservation measures.

In discussing new efficient measures and ways and means of their enforcement we are approaching complex questions of international law, the sacrosanct Flag-State principle and the principle of not giving laws extra-territorial application. These principles have, so to speak, been pillars of marine resource management both in CCAMLR and other international marine management organisations. In the Norwegian view, the Flag-State principle – i.e. that the responsibility resides with the Flag State – should continue as the basis of regulatory measures. We should therefore stop short of measures undermining the Flag-State principle. Likewise we should treat cautiously when approaching questions of extra-territoriality. The same goes for trade-related measures where we should take care that any measures would be in strict conformity with GATT and WTO.

This having been said, it should also be said that in our discussions we have profited much from the UN Straddling Stocks Agreement from 1995 as well as from the FAO Compliance Agreement and FAO's Code of Conduct. Although the straddling stocks agreement and the Compliance Agreement have not yet come into force, we have through measures adopted last year and new measures which we may adopt this year, gone far in the direction of implementing in practice measures set out in these two basic agreements. We have by far not exhausted the benevolent effect of these agreements which I would urge Member States to ratify so they may enter into force.

In discussing ways and means of combating illegal, unregulated and unreported fishing we should also more actively continue to draw on the experience of other relevant regional fishing management organisations such as NAFO and NEAFC. They are up against similar, if not identical, challenges.

In concluding, Mr Chairman, Norway is satisfied that work at this meeting so far has been permeated by a shared perception of the gravity of the situation. We have seen a constructive atmosphere and a will to share in the formulation of new measures to rectify the situation. We are hopeful that the Seventeenth Meeting of CCAMLR will stand out as one of the more successful meetings of the Commission.'

5.9 The New Zealand statement is summarised as follows:

New Zealand emphasised its concern about illegal, unregulated and unreported fishing and compared it to a cancer eating at the fibre of the Antarctic Treaty System. It expressed grave concern over reports of illegal activity in the waters under the jurisdiction of South Africa, France and Australia and commended them for their enforcement efforts. Regrettably, it was no longer a problem for South Africa because the plunder had continued and the illegal and unregulated fishers had moved on to other areas. As already noted by the observer from Namibia, illegal and unregulated fishing was being carried out in the main by companies and individuals originating from CCAMLR Parties. Much of what occurs appeared to be legal in the jurisdiction of such companies and the flags flown on the vessels when fishing for *Dissostichus* spp. generally appear to be the flags of third parties.

In looking at this problem a far-sighted, imaginative and creative approach was needed. New Zealand proposed that the way to deal with this problem was to call on all Parties to the Convention to put in place national measures that recognised responsibilities for the activities of their companies and nationals. Almost all Members of the Commission represented countries which were Consultative Parties to the Antarctic Treaty. As such, they recognised that effective exercise of national jurisdiction was the only way that the objectives of the Treaty and the Environmental Protocol could be met. New Zealand urged all Contracting Parties to put in place such effective national measures.

New Zealand also drew the attention of Commission Members to the particular situation in the Ross Sea and expressed its concern over indications that longliners associated with illegal, unregulated and unreported fishing for *Dissostichus* spp. might be getting ready to fish in the Ross Sea this summer season. New Zealand had put in place nationally a set of measures to help to identify any illegal and unregulated fishers. It would also be calling on CCAMLR Members to assist in whatever follow-up action was appropriate.

New Zealand reminded Members of the importance of balancing impositions on legal fishers which placed higher compliance costs on legal operators and made unregulated activity more attractive. Until and unless CCAMLR Parties were prepared to take effective action against nationals and companies, the rest of the world would fail to see CCAMLR as an effective conservation regime.

5.10 Chile stated that:

'Chile agreed with other Members in their concern on the impact of illegal and unregulated fishing both on the work of the Scientific Committee and the operation of CCAMLR as a whole.

Estimates by the CCAMLR Working Group on Fish Stock Assessment which have been considered by the Scientific Committee on the amount of unreported catch demonstrated that despite the existence of more stringent conservation measures the levels of unregulated fishing continue to challenge the feasibility of the objectives of the Convention. Certain steps taken at the 1997 Commission meeting require improvements to become fully operational: the licensing system, the implementation of an automated vessel monitoring system on licensed vessels, and extension of port controls to prevent the landings and transshipments from vessels assumed to be undermining the CCAMLR conservation measures.

The inspection system had been strengthened pursuant to Chilean proposals. Nevertheless, there is a need for new initiatives to certify and verify the origin of the catch, to establish a more complete vessel register, to prohibit reflagging when it contributes to undermine the conservation measures and build a tight integrated approach to attain a much higher level of compliance if CCAMLR is to maintain its credibility as an effective conservation and management regime.

Chile supported the whole range of conservation measures introduced by various Members to combat illegal, unregulated and unreported fishing and praised the US proposal for a certification system to monitor catch and trade of *Dissostichus* spp. Chile thanked as well the USA for coordinating the drafting process and facilitating acceptance of the various proposals. However, the whole set of new measures would only be effective if consistently applied in the entire Convention Area. Chile agreed with New Zealand that in the context of a situation such as the extension of unregulated fishing to the Ross Sea area or to any vulnerable ecosystem in the Antarctic Ocean, the effective exercise of national jurisdiction should be supported by collective action by all Contracting Parties to enforce compliance with the objective of the Convention.’

5.11 South Africa stated that:

‘South Africa is encouraged by the positive spirit reflected by the draft conservation measures put forward. However, South Africa shares New Zealand’s concern that these measures do not go far enough, especially in view of the already identified threat to resources of *Dissostichus* spp. in the Ross Sea and the recent South African experience with irresponsible fishing in its EEZ.

The strong measures announced by South Africa at the Sixteenth Meeting, some of which were criticised for going too far, turned out to not have gone far enough.

In our view a three-pronged approach was needed involving:

- (i) efficient vessel monitoring, both inside and outside the Convention Area;
- (ii) Port State control involving Parties and non-Parties to CCAMLR; and
- (iii) trade flow monitoring and, if possible, control.

South Africa welcomes the draft measures put forward by especially the USA and the European Community, but would remark with regard to VMS, that in the event of breakdowns the proposed grace period should be reduced and these events should be reported to the Secretariat.’

5.12 The Commission concluded that the level of illegal, unregulated and unreported fishing reported from the Convention Area continued to be unacceptable and endorsed the recommendations of SCOI and the Scientific Committee that the most stringent measures possible should be taken to deal with such fishing.

5.13 The USA welcomed, in particular, the statement made by the observer from Namibia

who provided information on catches landed in the ports of Namibia by companies and nationals from CCAMLR Member countries (see paragraph 2.20). In this regard the USA believed that in order to receive full support of and develop cooperation with non-Contracting Parties, the Commission should explore all possible means consistent with the Convention to deal with illegal, unregulated and unreported fishing with respect to Contracting Parties. Until that is done, it will be difficult to obtain the cooperation of non-Contracting Parties. In the US view, it is time to move from reiterating the seriousness of the problem to dealing with it.

5.14 The Commission requested, as suggested by Poland, that Namibia and Mauritius provide the Secretariat with all available information on landings of *Dissostichus* spp. into ports under their jurisdiction.

5.15 In discussing conservation measures to deal with the problem of illegal, unregulated and unreported fishing as a whole, the Commission took into account the advice of SCOI (Annex 5, paragraphs 2.24, 2.47, 2.53, 2.55, 2.61, 2.64 and 2.69). Discussion on measures aimed at better controlling illegal, unregulated and unreported fishing in the Convention Area is set out in the following paragraphs.

Catch Certification Scheme

5.16 The USA tabled two draft conservation measures (CCAMLR-XVII/34) based in part on the statistical documentation scheme of ICCAT. Australia tabled a similar proposal (CCAMLR-XVII/24). After consultations, the USA tabled a revised draft which combined common elements of the Australian and US proposals.

5.17 The USA noted that its draft contained two basic principles:

- (i) the catch certification system should be based on Flag State responsibilities; and
- (ii) it must be consistent with international trade agreements, including that of WTO.

These could be subsumed into a suite of interlinking measures.

5.18 The first measure would establish a framework for tracking the landings and trade flows of *Dissostichus* spp. from the Convention Area through a certificate of origin system. The second measure would provide for Contracting Parties to deny access to their markets of imports of *Dissostichus* spp. unless it was demonstrated that the *Dissostichus* spp. were caught in the Convention Area in accordance with CCAMLR conservation measures or were caught legitimately outside the Convention Area.

5.19 It is intended that the system would provide information to be used for tracking trade flows of *Dissostichus* spp. originating in the Convention Area and also for the evaluation by the Scientific Committee of the total quantities of fish removed from targeted stocks.

5.20 The proposal was discussed by SCOI (Annex 5, paragraphs 2.44 to 2.47), but after further modification consensus could not be reached by the Commission.

5.21 The Commission endorsed the importance of developing such a catch certification scheme for *Dissostichus* spp. and the urgency of doing so, and it saw the US draft as a significant step forward in this direction. The proposal was seen as a noteworthy initial step in the development of what is likely to be a complicated series of interlinking regulatory fisheries and trade-based measures to monitor catches and trade of *Dissostichus* spp. It was agreed that further and urgent development of this framework should be undertaken and that the draft US measure should be appended to the Commission's report (Annex 6) to provide a focus for further high-priority work.

5.22 To this end, it was also agreed that an intersessional meeting should be held in early 1999 to move the development of the catch certification scheme forward with a view to adopting a catch certification, or inherently similar scheme at CCAMLR-XVIII. The Commission welcomed the offer of the European Community to host such a meeting in Brussels, Belgium, during the second half of April 1999.

5.23 Australia tabled a draft action policy (CCAMLR-XVII/35) which proposed that the Commission establish a comprehensive approach for the elimination of illegal, unregulated and unreported fishing for *Dissostichus* spp. within the Convention Area. Australia stressed that, in addition to the agreed intersessional meeting to further elaborate approaches to certify the origin of catch and flows of *Dissostichus* spp. in trade, Members should also work intersessionally on the following key issues:

- (i) harmonising the conservation program for *Dissostichus* spp. with recent developments in international law, e.g. the 1995 UN Agreement for the Implementation of Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNIA);
- (ii) examining approaches that could be adopted by the Commission, consistent with the objective of the Convention, for areas adjacent to the Convention Area;
- (iii) approaches which can envisage cooperation with non-Contracting Parties; and
- (iv) reviewing of the objective and role of SCOI, in order to better assist the Commission in achieving its objective.

5.24 The Commission recognised the importance of the issues raised by Australia in its paper, and encouraged Members to pursue such cooperative intersessional work as recommended by Australia.

5.25 The Commission identified various other measures to combat illegal, unregulated and unreported fishing. These are discussed below.

Trade Statistics for *Dissostichus* spp.

5.26 SCOI provided advice on the potential utility of using trade statistics to better understand the international trade flows of *Dissostichus* spp. (Annex 5, paragraphs 2.16 to 2.24).

5.27 For available trade statistics, it was pointed out that a wide variety of common and market names are used for *Dissostichus* spp. It was further noted that this complicates the basic collection of statistics. Several Members stressed the importance of using scientific names to verify species identity in the collection and compilation of trade statistics.

5.28 The USA reported that, since 1 January 1998, the use of specific harmonised system codes are required on all documentation accompanying the import of *D. eleginoides* into the USA (CCAMLR-XVII/BG/24). The analyses undertaken by the USA identified an increase over the past two years in the import of *Dissostichus* spp. to the USA market from a number of countries which are implicated in illegal, unregulated and unreported fishing in the Convention Area.

5.29 The Commission commended the USA on their approach which could be used by other Members as a model and suggested that a classification within the harmonised system should be developed for both *D. eleginoides* and *D. mawsoni*.

5.30 The Commission agreed that Members should:

- (i) introduce new classification codes in trade statistics at a national level; and
- (ii) review the matter at CCAMLR-XVIII.

Marking of Fishing Vessels and Fishing Gear

5.31 A draft conservation measure was tabled by the European Community (CAMLX-XVII/31 Rev. 1) taking into account a proposal put forward by Australia. There was general support at SCOI for this conservation measure (Annex 5, paragraphs 2.54 and 2.55).

5.32 Accordingly, Conservation Measure 146/XVII was adopted by the Commission (paragraph 9.57).

Automated Satellite-Linked Vessel Monitoring Systems

5.33 A draft conservation measure was tabled by the European Community (CCAMLR-XVII/30 Rev. 1). It introduced a requirement for the mandatory use of VMS by Flag States of Contracting Parties to monitor their fishing vessels operating in the Convention Area.

5.34 In presenting the draft to the Commission, the European Community reiterated its basic approach that all fishing vessels should be covered by VMS. A number of countries, however, had views that krill fishing vessels should be exempt, for the time being, from the requirement to use VMS (Annex 5, paragraphs 2.50 and 2.51). The Republic of Korea, Poland, Russia and Ukraine re-stated their position with regard to exemption from VMS for vessels fishing for krill. In addition, Poland referred to CCAMLR-XVII/BG/30 which contained a policy statement adopted at the recent meeting of the International Coalition of Fisheries Associations (ICFA). ICFA supported the introduction of a mandatory VMS on all vessels fishing in the Convention Area with the exception of vessels fishing for krill.

5.35 The European Community maintains its position that, as a matter of principle, VMS should be installed on all vessels fishing in CCAMLR waters and particularly on vessels fishing for krill given that these vessels are not required to have scientific observers on board. The European Community, nevertheless, with a view to accommodating the concerns expressed by certain Members, agreed that vessels fishing for krill may be exempted from this measure on an interim basis, this situation being open to review in the light of developments in CCAMLR.

5.36 With regard to the date of introduction of the system, it was noted that the level of development and implementation of VMS varies from country to country and that the proposed deadline of 1 March 1999 is not practicable for several Members (Annex 5, paragraph 2.52). The Republic of Korea expressed its view that it could introduce its own VMS no earlier than 1 January 2000.

5.37 To meet this concern, paragraph 2 of the draft measure was revised and Conservation Measure 148/XVII was adopted by the Commission (paragraphs 9.57 and 9.58).

5.38 New Zealand stated its view that the introduction of mandatory VMS on vessels fishing for finfish, is a positive development. It nevertheless found it regrettable that it has not been possible for all countries to subscribe to the immediate introduction of VMS and that krill vessels have been excluded from coverage. It considered VMS as a vital tool to assist Flag States in fulfilling their obligations to monitor and control their flag vessels. New Zealand regarded the operational requirements of the VMS conservation measure as a minimum and did

not consider that this consensus decision is in any way a precedent for other areas and circumstances.

5.39 A number of Members supported the view expressed by New Zealand.

Application of VMS in Areas Adjacent to the Convention Area

5.40 At SCOI, several Members highlighted the need to monitor vessels fishing for *Dissostichus* spp. in areas adjacent to the Convention Area and the potential for VMS to assist this task (Annex 5, paragraphs 2.65 to 2.67). A draft resolution was presented by Australia which was prepared taking into account existing Resolution 10/XII on harvesting of stocks occurring both within and outside the Convention Area.

5.41 The Commission noted that while there was no agreement in SCOI on a resolution to make wider use of VMS on vessels fishing in areas adjacent to the Convention Area, several Contracting Parties already require this and other Parties were considering such a practice. The Commission encouraged Parties to give consideration to requiring use of VMS in areas adjacent to the Convention Area.

Licensing and Inspection Regime of Contracting Parties

5.42 Two draft conservation measures based on the provisions of Conservation Measure 119/XVI were considered.

5.43 The first draft conservation measure was tabled by the European Community (CCAMLR-XVII/32 Rev. 2). This revision of an earlier draft took into account a number of comments made by SCOI (Annex 5, paragraphs 2.56 to 2.61).

5.44 The second draft conservation measure was tabled by Chile (CCAMLR-XVII/37).

5.45 Chile noted that its draft differed from the one submitted by the European Community only in the comprehensive nature of the licensing regime that the Contracting Parties would be required to establish in order to comply with the objectives of the Convention. The draft prepared by Chile maintains the language used in a similar document adopted by NAFO.

5.46 The European Community believed that some modifications were still required to the language of the draft prepared by Chile, in particular, with respect to provisions already provided in the System of Inspection, and provisions related to the FAO Compliance Agreement.

5.47 Accordingly, Conservation Measure 119/XVII was adopted by the Commission (paragraph 9.57).

Cooperation between Contracting Parties to Ensure Compliance

5.48 A draft conservation measure was tabled by the European Community (CCAMLR-XVII/33 Rev. 1). It took into account a number of clarifications and editorial changes proposed by SCOI (Annex 5, paragraphs 2.62 to 2.64). The main objective of this measure was to ensure cooperation between Contracting Parties, especially when vessels of one Contracting Party enter ports of another Contracting Party.

5.49 Accordingly, Conservation Measure 147/XVII was adopted by the Commission (paragraph 9.57).

5.50 Japan expressed concern about the feasibility of complying with Conservation Measure 147/XVII because of the limited number of inspectors which may be available at its ports visited by foreign fishing vessels.

5.51 The Commission noted this concern, and agreed that the wording in paragraph 1 of Conservation Measure 147/XVII, as it relates to the undertaking of the inspection by the Port State, may be reconsidered in 1999 in the light of experience gained by Members in the conduct of required inspections.

5.52 After consultation with other Members concerned, and in order to avoid any doubt, South Africa expressed the collective understanding that Conservation Measure 147/XVII does not affect the exercise of rights preserved by the Convention, in particular, by Article IV.2(b).

5.53 In relation to the declaration of South Africa, the USA reserved its position, based on the provisions of Article IV of the Convention as a whole.

5.54 With respect to the statements made by South Africa and the USA, Chile considered that the application of this conservation measure does not undermine the rights referred to in Article IV.2(b) of the Convention.

CCAMLR Vessel Register

5.55 A CCAMLR Vessel Register was proposed by Australia (CCAMLR-XVII/25). The Commission noted that SCOI had initiated discussions on the matter and indicated that the proposal would require further reflection in terms of its substance, its possible uses and its eventual accessibility (Annex 5, paragraph 2.40).

5.56 The Commission considered Australia's proposal that Contracting Parties, in addition to existing vessel information supplied to the Secretariat, also provide a general description of their vessels, including its general dimensions, markings, types of fishing gear it can use and a colour photograph of the vessel. In agreeing to the proposal, the Commission requested SCOI to review the usefulness of additional vessel information at its next meeting.

5.57 The Commission also considered whether States which are not Party to the Convention may be allowed access to information about Contracting Parties' vessels licensed to fish in the Convention Area. The potential benefits of developing cooperative links with non-Contracting Parties, especially those which may be prepared to cooperate with the Commission to avoid undermining the effectiveness of CCAMLR conservation measures, were acknowledged. The Commission considered that Namibia and Mauritius were two such States and agreed to allow them access to the information on Contracting Parties' vessels. The Commission noted that there may be future benefits in allowing access by other non-Contracting Parties to this information and agreed to consider other cases on an individual basis.

5.58 The Commission agreed that further development of the CCAMLR Vessel Register Scheme should be addressed during the forthcoming intersessional period.

Action Plan

5.59 Australia proposed that the Commission should commit itself to an Action Plan to combat the illegal, unregulated and unreported fishing of *Dissostichus* spp. in the Convention

Area (CCAMLR-XVII/24). In presenting this proposal, Australia advised that the plan has the following objectives:

- (i) to review a framework of conservation measures as proposed by the European Community;
- (ii) to review how this framework would interact with other international agreements such as UNIA;
- (iii) to consider possible approaches for areas adjacent to the Convention Area; and
- (iv) to further elaborate trade-related measures that can better combat illegal, unregulated and unreported fishing.

Australia believed that such a plan is of the utmost urgency and needs to be elaborated in the intersessional period.

5.60 The European Community and the USA felt that future development of an Action Plan should incorporate existing conservation measures, including those which would be adopted at this meeting.

5.61 The Commission agreed that further development of such an Action Plan as prepared by Australia, should be considered during the forthcoming intersessional period.

Actions in Respect of Companies and Nationals of Flag States

5.62 At the meeting of SCOI, New Zealand tabled a proposal to consider the application of national jurisdiction by CCAMLR Parties to their nationals and companies in respect of fishing activities in the Convention Area. This proposal was considered by SCOI (Annex 5, paragraphs 2.41 to 2.43).

5.63 New Zealand's position was that Parties to CCAMLR must take responsibility for their companies and nationals in Antarctic waters. New Zealand advised the Commission that it will be acting on any information that it can obtain on future illegal/unregulated fisheries activities in the Ross Sea. In that regard, New Zealand will hold Parties accountable for the activities of their nationals that undermine the objective of the Commission.

5.64 The European Community, together with other Members, expressed the view that the term 'nationals' in the context of Part 7 of the UN Convention on the Law of the Sea (UNCLOS) refers to 'vessels' and that therefore only the Flag State can exercise jurisdiction over its fishing vessels on the high seas, both as a right and as a duty. Flag State jurisdiction should therefore be the principal means of controlling activities in Antarctic waters.

Amendment to Conservation Measure 118/XVI

5.65 Two proposals were received for amendments to Conservation Measure 118/XVI:

- (i) a proposal by Japan aimed at clarifying paragraph 6 of this measure by qualifying the reference from 'vessels' to 'fishing vessels' (CCAMLR-XVII/40); and
- (ii) a proposal from Australia with respect to paragraph 5 of the measure aimed at clarifying the way in which it could be established whether the fish were caught inside or outside the Convention Area (CCAMLR-XVII/38).

5.66 Accordingly, Conservation Measure 118/XVI was revised and adopted as Conservation Measure 118/XVII (paragraph 9.57).

5.67 The Commission recognised that some Members may encounter difficulties in the application of this conservation measure and encouraged Members of the Commission to exchange experiences and assist each other on such application.

5.68 Notwithstanding the possible difficulties mentioned above, the Commission agreed that all Members would, in the meantime, seek to ensure the application of this measure within their domestic legislation.

5.69 Chile considers that the reference made at the end of paragraph 5 of this conservation measure (i.e. compliance with conservation measures and with provisions of the Convention by vessels of non-Contracting Parties operating in the Convention Area), is contrary to the conservation measures, contradicts the practice of the Contracting Parties and of the Commission, and challenges the objectives of the Convention.