



联合国
粮食及
农业组织

FOOD AND
AGRICULTURE
ORGANIZATION
OF THE
UNITED NATIONS

ORGANISATION
DES NATIONS
UNIES POUR
L'ALIMENTATION
ET L'AGRICULTURE

ORGANIZACION
DE LAS NACIONES
UNIDAS PARA
LA AGRICULTURA
Y LA ALIMENTACION

منظمة
الغذية
والزراعة
للأمم
المتحدة

SAFR/DM/SWIO2/04/ 4E

**FOURTH INTER-GOVERNMENTAL CONSULTATION ON THE
ESTABLISHMENT OF THE SOUTH WEST INDIAN OCEAN FISHERIES
COMMISSION**

Mahe, Seychelles, 13 – 16 July 2004

PROPOSALS RECEIVED FROM THE DRAFTING COMMITTEE

SUMMARY

This document presents the proposals that were provided by members of the Drafting Committee to the Chairperson in relation to a first working draft of the Southern Indian Ocean Fisheries Agreement.

Proposals from Australia, New Zealand and Secretarial comments from the FAO Legal Adviser were specific to the first working draft. The proposals from the European Community related to the process towards an international fisheries arrangement or instrument for the Southern Indian Ocean

CONTENTS

Australian proposals ¹	pages 2 - 25
European Commission proposals.....	pages 26 - 27
New Zealand proposals.....	pages 28 - 63
The Secretariat's comments are referred to in the Australian proposals.	

¹ Australia wished to note that its proposals were provided without prejudice to any position Australia may wish to adopt at the meeting

Text	Secretariat Comments	Australian Comments
<p style="text-align: center;">PART I DRAFT AGREEMENT SOUTHER INDIAN OCEAN FISHERIES AGREEMENT (SIOFA)</p> <p style="text-align: center;">PREAMBLE²</p> <p>The Contracting Parties HAVING A MUTUAL INTEREST in the proper management, long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean, and desiring to further the attainment of their objectives through international cooperation;</p> <p>TAKING INTO CONSIDERATION that the coastal States have established waters of national jurisdiction in accordance with the United Nations Convention on the Law of the Sea, 1982, and general principles of international law within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fisheries resources as well as conserving living marine resources upon which fishing has an impact;³</p> <p>[NOTING the principles stated in Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992;]⁴</p> <p>RECALLING THE RELEVANT PROVISIONS of the United Nations Convention on the Law of the Sea of 10 December 1982; the 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, 1995; and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;</p> <p>RECALLING FURTHER Article 17 of the 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</p>	<p>1. Title: Typo. Should read “Southern”.</p> <p>2. Preamble: Para 2. Suggest either “waters under national jurisdiction” or “areas of national jurisdiction”. Probably the first is best. Delete the comma after 1982 and insert a comma after international law, for grammatical reasons.</p>	<p>- Australia is happy to support the drafting suggestion of the secretariat on the title</p> <p>- preamble, para 2: Australia would also prefer ‘waters under national jurisdiction</p> <p>- preamble, para 2: Australia would similarly support the deletion of the comma after 1982</p> <p>- as noted previously, Australia would question the need for para 3 of the preamble – especially since the present agreement will be formally legally binding whereas Agenda 21 is formally non-binding.</p> <p>- Australia would like to include para 5 making a reference to the position of non-members as a result of the agreement – Australia would also like to retain the article on non-members as per the suggestion of the Secretariat</p>

² Source – draft SWIOC Agreement, Preamble. Paragraphs relating to FAO background omitted.

³ With proposed editing by Australia.

⁴ Australia expressed a reservation on the need for this language.

<p>Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and the need for States that are not Parties to this Agreement to apply the conservation and management measures adopted under this Convention and not to authorise vessels flying their flag to engage in fishing activities which are inconsistent with the conservation and sustainable use of fisheries resources which are the subject of this Convention.⁵</p> <p>RECOGNIZING economic and geographical considerations and the special requirements of developing States and their coastal communities, for equitable benefit from fishery resources;</p> <p>DESIRING cooperation between the Coastal States and with all other States, Organisations and Fishing Entities having a real interest in the fishery resources of the Southern Indian Ocean to ensure compatible conservation and management measures;</p> <p>BEARING IN MIND that the achievements of the above will contribute to the realization of a just and equitable economic order in the interests of all humankind, and in particular the special interests and needs of developing States;</p> <p>CONVINCED that the conclusion of a multi-lateral Agreement for the long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean would best serve these objectives;</p> <p>Agree as follows:</p>		
<p style="text-align: center;">ARTICLE 1 – DEFINITIONS⁶</p> <p>For the purposes of this Agreement:</p> <p>(a) “1993 Compliance Agreement” means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the FAO Conference in 1993;</p> <p>(b) “1982 Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982</p> <p>(c) “1995 Agreement” means the 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, 1995;</p> <p>(d) “Code of Conduct” means the Code of Conduct for Responsible Fisheries adopted by the</p>	<p>3. Article 1 – Definitions</p> <p>para. (e) : Change “Contracting Parties” (plural) to “Contracting Party” (singular), for grammatical reasons.</p> <p>para (h): For same reasons, change “mother ships, any other vessels directly engaged in such fishing operations, and vessels engaged in transshipment;” into the singular, i.e. “ a mother ship,</p>	<p>- Australia is happy to support the drafting suggestion by the Secretariat regarding singular references</p> <p>- para (i): Australia does not perceive this difficulty on the present draft as ‘sedentary species’ are referred to in the chapeau, nor is Australia convinced that the addition of the word ‘but’ before ‘excluding’ in the chapeau would add clarity. Australia would welcome further views on this issue.</p>

⁵ Text proposed by Australia.

⁶ Source – draft SWIOC Agreement, Article 1.

28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;

- (e) **“Contracting Parties” means any State or regional economic integration organisation which has consented to be bound by this Agreement and for which the Agreement is in force;**
- (f) **“Regional economic integration organisation” means a regional economic integration organisation to which all its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;**
- (g) **“Fishing” means:**
 - (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;
 - (iii) placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons;
 - (iv) any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel; or
 - (v) the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;
- (h) **“Fishing vessel” means any vessel used or intended for fishing, including mother ships, any other vessels directly engaged in such fishing operations, and vessels engaged in transshipment;**
- (i) **“Fishery resources” means resources of fish, molluscs, crustaceans and other sedentary species within the Area, excluding:**
 - (i) **sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77 paragraph 4 of the 1982 Convention; and**
 - (ii) **highly migratory species listed in Annex I of the 1982 Convention;**
- (j) **“Area” means the area to which this Agreement applies, as prescribed in Article 4;**
- (k) **“Transshipment” means unloading of all or any of the fishery resources on board a fishing vessel to another vessel whether at sea or in port.**

any other vessel directly engaged in such fishing operations, and any vessel engaged in transshipment;”
para (i): the use of the expression “and other sedentary species” implies that fish are all sedentary. I would suggest the following “ means resources of fish, including molluscs, crustaceans and other sedentary species within the Area, but excluding:”

<p style="text-align: center;">ARTICLE 2 – OBJECTIVES⁷</p> <p>The objectives of this Agreement are to ensure the long term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development of fisheries in the Area, taking account of the needs of developing states [of the region] that are party to this Agreement.</p>		<p>Words ['of the region']': - as noted previously Australia is of the view that whilst under the agreement the focus should be on developing states 'within the region' that there may be circumstances in which the needs of other developing states are required to be taken into account. Whilst such circumstances are difficult to foresee, little is achieved by limiting the text other than limiting the flexibility of members.</p>
<p style="text-align: center;">ARTICLE 3 – AREA OF APPLICATION⁸</p> <p>1. This Agreement applies to the Area bounded by a line joining the following points along parallels of latitude and meridians of longitude, excluding the areas under national jurisdiction of Contracting Parties bordering on that area: Commencing at the landfall on the continent of Africa of the parallel of 30° East; from there north-north-east along the coast of Africa to its intersection with the parallel of 10° North; from there east along that parallel to its intersection with the meridian of 65° East; from there south along that meridian to its intersection with the equator; from there east along the equator to its intersection with the meridian of 80° East; from there south along that meridian to its intersection with the parallel of 20° South; from there east along that parallel to its landfall on the continent of Australia; from there south and then east along the coast of Australia to its intersection with the meridian of 120° East; from there south along that meridian to its intersection with the parallel of 55° South; from there west along that parallel to its intersection with the meridian of 80° East; from there north along that meridian to its intersection with the parallel of 45° South; from there west along that parallel to its intersection with the meridian of 30° East; from there north along that meridian to the point where the line began as shown in the map in the Annex 1 to this Agreement.</p> <p>2. Where for the purpose of this Agreement it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).</p>	<p>4. Article 3 – Area of application : The last phrase is a bit confusing as it implies that areas under the jurisdiction of non-Parties or of Contracting Parties that don't border the area are somehow included. I would suggest redrafting as "excluding areas under national jurisdiction."</p>	<ul style="list-style-type: none"> - Australia is happy to support the drafting suggestion proposed by the Secretariat - Australia suggests that para 2 might usefully become a footnote, rather than needing to be a paragraph of the agreement - Australia would suggest a further additional clarifying footnote to the effect that 'For the avoidance of doubt, the phrase 'excluding the areas under national jurisdiction' is intended to exclude the exclusive economic zone claimed by states in accordance with international law'

⁷ Source – Draft SWIOC Agreement, Article 2.

⁸ Source – Draft SWIOC Agreement, Article 4.

<p style="text-align: center;">ARTICLE 4 – GENERAL PRINCIPLES⁹</p> <p>In giving effect to the duty to cooperate in accordance with the 1982 Convention and international law, the Contracting parties shall, individually and jointly, apply in particular the following principles:</p> <ul style="list-style-type: none"> a) adopt measures based on the best scientific evidence available to ensure the long term conservation of fishery resources, taking into account the sustainable use of such resources and implementing an ecosystem approach to their management; b) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; c) apply the precautionary approach in accordance with the Code of Conduct and the 1995 Agreement; d) maintain stocks at levels that are capable of producing the maximum sustainable yield, and rebuild depleted stocks to the said levels; e) ensure that fishing practices and management measures take due account of the need to minimize the harmful impact of fishing activities on the marine environment; f) protect biodiversity in the marine environment; g) give full recognition to the special requirements of developing States as set out in Article 14. 	<p>5. Article 4 – General Principles : Typo. “Parties” should be with a capital. I would suggest deleting the words “in particular”, as I don’t know what that means or adds to the sentence.</p>	<p>- Australia notes that the words ‘in particular’ just provide a point of emphasis that the obligations on the parties at international law may extend beyond those listed in this article.</p> <p>- para (c) - Australia would like to add words along the following lines ‘noting that the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.’</p>
<p style="text-align: center;">ARTICLE 5 – MEETING OF THE PARTIES¹⁰</p> <ul style="list-style-type: none"> 1. The Contracting Parties shall meet periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto. 2. The ordinary Meeting of the Parties shall take place at least once a year, and to the extent practicable, in conjunction with meetings of the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean. 3. The Parties may also hold extraordinary meetings when deemed necessary. These meetings shall be convened at the request of any Party, provided that such request is supported by a 	<p>6. Article 5 - Meeting (Meetings) of the Parties. In a literal sense, this should probably be “Meetings of the Contracting Parties”, given that Contracting Parties is defined. I note that the CBD does use Conference of Parties.</p>	<p>- title: Australia would prefer to refer to ‘Parties’, rather than ‘Contracting Parties’ throughout (‘Contracting’ is redundant), however if other delegations are particularly attached to ‘Contracting’ Australia’s view is that it should be used consistently throughout</p> <p>- para 2: if the intention is to shorten the</p>

⁹ Source – Draft SWIOC Agreement, Article 6, modified to include elements proposed by NZ.

¹⁰ Source – Article VII of the AIDCP Agreement and Article 6 Draft SWIOC Agreement.

¹¹ Source – Draft SWIOC Agreement, Article 11.6, slightly modified.

<p>majority of the Parties.</p> <p>4. The Meeting of the Parties shall be held when a quorum is present. Quorum is reached when a majority of the Parties are present. This rule shall also apply to meetings of subsidiary bodies established under this Agreement.</p> <p>5. The Meeting of the Parties shall elect a Chairperson and two Vice-Chairpersons from among the Contracting Parties with the terms and conditions of appointment to be determined by the Meeting. They shall hold office for two years and may be re-elected. The Chairperson and a Vice-Chairperson shall not be from the same Contracting Party.¹¹</p> <p>6. The Meeting of the Parties may adopt and amend its own Rules of Procedure and those of its subsidiary bodies.</p>	<p>Para 2: I would suggest “back-to-back with meetings of the Commission”, rather than in conjunction with, as this is more explicit and is the wording used by the Consultation and in the draft Statutes of the Commission.</p> <p>Para 4: I would suggest rewording the provision as “A majority of the Contracting Parties shall constitute a quorum for meetings of the (Contracting) Parties and subsidiary bodies established under this Agreement” in line with the original text. Otherwise you would have to insert an “only” before the words “when a quorum is present. A quorum etc”.</p> <p>Para 5 : I would suggest “from among the representatives [delegations] of the Contracting Parties” to avoid confusion with the last sentence. I would also suggest adding a new paragraph along the lines of Article 7.3, as follows : “Each Contracting Party shall be entitled to appoint one representative to the Meeting of [Contracting] Parties. Such representative may be accompanied by advisers.”</p>	<p>document Australia notes that you could just delete the text after ‘take place at least once a year’.</p> <ul style="list-style-type: none"> - para 4 – Australia is happy to support the drafting suggestion provided by the secretariat - para 5 – Australia notes that if the intention is to shorten the document para 5 can be deleted. If it is to be retained Australia would suggest ‘from nationals of the Contracting Parties’
<p>ARTICLE 6 – FUNCTIONS OF THE MEETING OF THE PARTIES¹²</p>	<p>7. Article 6 – Functions of the</p>	<p>- Australia expresses no real preference</p>

¹² Source – Draft SWIOC Agreement, Article 7, modified – The areas cited in the “bullet points” identified by chair and NZ at the 3rd IGC-Nairobi have been preserved in this draft.

<p>Subject to Article 4, the Meeting of the Parties shall:</p> <ul style="list-style-type: none"> a) review the state of fishery resources, including their abundance and the level of their exploitation; b) [as required,] promote and co-ordinate [and undertake]¹³- research activities on the fishery resources occurring in the Area and in contiguous areas, including discarded catch and the impact of fishing on the marine environment, taking into account the environmental and oceanographic characteristics of the Area; c) [as required,] formulate and adopt conservation and management measures necessary for ensuring the long term sustainability of the fishery resources based on the best scientific evidence available; d) adopt generally recommended international minimum standards for the responsible conduct of fishing operations; e) develop rules for the collection and verification of scientific and statistical data, as well as for the submission, publication, dissemination and use of such data; f) collect, and share in a timely manner, data concerning fisheries activities, in particular on vessel position, retained catch, discarded catch and fishing effort while maintaining confidentiality, where appropriate; g) evaluate the impact of fishing, other human activities and environmental factors on the fishery resources and on the marine environment; h) promote co-operation and co-ordination between Contracting Parties to ensure that conservation and management measures for straddling fish stocks in areas under national jurisdiction and measures for the same stocks of fishery resources are compatible; i) [as required,] develop, rules and procedures for the monitoring, control and surveillance of fishery activities in order to ensure compliance with conservation and management measures adopted on the basis of the present Agreement including, where appropriate, a system of verification incorporating vessel monitoring, observation and inspection; j) [as required,] develop measures to prevent, deter and eliminate illegal, unreported and 	<p>Meeting of Parties: para h) Suggest replace “between” with “among”, for grammatical reasons.</p> <p>Para k): Typo. Replace ”Member” by ”Contracting Party”.</p>	<p>on the suggestions provided by the Secretariat.</p> <ul style="list-style-type: none"> - para j – Australia would delete ‘[as required]’ - para k: Australia would prefer the text in bold ie ‘[attainment of the objectives of this Agreement]’ as less limited
---	--	---

¹³ On the basis of a light agreement and the event that the future arrangement is not based on an autonomous centralised budget, the possibility for the undertaking of research is limited.

¹⁴ A relatively similar provision was included in paragraph 14 of Article 7 of the Draft SWIOC Agreement. This language reflects the proposal of NZ for this MoP function.

<p>unregulated, fishing (IUU fishing);</p> <p>k) in accordance with international law and any applicable instruments, draw the attention of any State that is not a Member, to any activities that undermine the [attainment of the objectives of this Agreement] [effectiveness of conservation and management measures adopted under this Agreement];</p> <p>l) [as required,] establish the criteria for and rules governing participation in fishing;¹⁴</p> <p>m) carry out any other tasks and functions necessary to achieve the objectives of this Agreement.</p>		
<p style="text-align: center;">ARTICLE 7 – SUBSIDIARY BODIES¹⁵</p> <p>1. The Meeting of the Parties shall establish a permanent Scientific Committee, which shall meet at least once a year, preferably prior to the Meeting of the Parties. The functions of the Scientific Committee shall be:</p> <p>a) to conduct the scientific assessment of the fishery resources stocks covered by this Agreement;</p> <p>b) to encourage and promote co-operation in scientific research in order to improve knowledge and review of the state of the fishery resources;</p> <p>c) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of the conservation and management measures referred to in Article 6.1.b) ;</p> <p>d) to provide advice and recommendations to the Meeting of the Parties for the formulation of measures regarding the monitoring of fishing activities;</p> <p>e) to provide advice and recommendations to the Meeting of the Parties on appropriate standards and format for fishery data collection and exchange;</p> <p>f) any other function that the Meeting of the Parties may decide.</p> <p>2. The Meeting of the Parties may also establish such temporary, special or standing committees to study and report on matters pertaining to the implementation of the objectives of this Agreement, and working groups to study and recommend on specific technical problems.</p>	<p>8. Article 7 – Subsidiary bodies para 4. Typo. Replace “Chair” by “Chairperson”</p>	<p>- Australia expresses no real preference on the suggestion provided by the Secretariat.</p> <p>- as regards the scientific committee more generally, consistently with a low cost approach, Australia would seek to replace the words ‘shall establish a permanent Scientific Committee’ with ‘should as required establish a Scientific Committee’ and delete ‘, which shall meet at least once a year, preferably prior to the Meeting of the Parties’</p> <p>- subpara (c) – should this be a cross reference to subpara 6.1(c)</p> <p>- Australia would also like to see scope for the Scientific Committee to consider environmental matters – this could be achieved by a reference along the following lines: ‘(a) to conduct the scientific assessment of the fishery resources stocks covered by this Agreement and the impact of fishing on the marine environment, taking into account the environmental and</p>

¹⁵

Source – Draft SWIOC Agreement, Article 14, modified.

<p>3. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee and to any other committee or working group that may be established. Such representative may be accompanied by advisers.</p> <p>4. The committees and working groups referred to this Article shall be convened by the Chair of the Meeting of the Parties.</p>		<p>oceanographic characteristics of the Area;’</p>
<p style="text-align: center;">ARTICLE 8 – DECISION MAKING¹⁶</p> <p>1. Unless otherwise provided in this Agreement,¹⁷ decisions of the Meeting of the Parties and its subsidiary bodies on matters of substance shall be taken by consensus of the Contracting Parties present. Consensus means the absence of any formal objection made at the time the decision was taken. (AUS) The question of whether a matter is one of substance shall be treated as a matter of substance.</p> <p>[2. If efforts to reach a decision by consensus have been exhausted, as identified by the Chairperson, decisions shall be taken by a majority of four-fifths of the Members present and voting.]¹⁸</p> <p>3. Decisions on matters other than those referred to in paragraph 1 shall be taken by a simple majority of the Members present and voting.</p> <p>4. Decisions adopted by the Commission are binding on all Contracting Parties.¹⁹</p>	<p>9. Article 8 – Decision-making Para 2: Typo. Replace “Members” by “Contracting Parties”</p>	<p>- Australia expresses no real preference on the suggestion provided by the Secretariat.</p> <p>- para 4: replace ‘Commission’ with ‘Meeting of the Parties’</p> <p>- footnote 17: if an objection procedure is to be included as per the preference of the EC Australia would note that an objection should not be the beginning and end of the process – or else a single state could defeat any conservation or management measures by simply opting out - rather it should lead to a procedure as in WCPFC where the decision becomes binding unless overturned on limited grounds.</p>
<p style="text-align: center;">ARTICLE 9 – SECRETARIAT</p> <p><i>Alternative 1 – Contracting out the secretariat to FAO or IOTC. The Provider is not referred to by name with a view to facilitate a decision, if appropriate, to seek the services of a different provider at the end of any 5-year term. The details of payment procedures and consequences of non-payment of quotas by Parties could be established in the Secretariat Assistance Arrangement and in the Decision of the MOP which would approve the SSA and authorise the Chair to sign it. Specific arrangements should be agreed for the period since the adoption of the Agreement until the first</i></p>	<p>10. Article 9 – Secretariat para 1: I am not sure that the present wording would cover FAO. Perhaps it could be reworded as “an existing international organization competent in fisheries matters or a Regional Fisheries</p>	<p>- Australia is of the view that the question of Secretariat support need not be contained in the agreement, rather it can be worked out by the Parties subsequently – accordingly in the interests of shortening the document it may be preferable to delete this article.</p> <p>- Alternatively Australia could support a</p>

¹⁶ Source – Draft SWIOC Agreement, Article 11, modified.

¹⁷ It is proposed in Article 21 that amendments to the Agreement and annexes are adopted by Consensus of all Contracting Parties. That would be the only exception to the general “consensus of the present” rule under this draft.

¹⁸ As proposed by Australia in comments to Draft SWIOC Agreement. In case of majority voting, the EC would require an objection procedure, such as the provisions foreseen in the Draft SWIOC Agreement, Article 12, paragraphs 4 to 9).

¹⁹ Proposal by Australia.

<p><i>Secretariat Assistance Arrangement may be officially decided by the Meeting of the Parties and concluded with the Provider. See also in this respect the comments concerning the implementation of Interim Arrangements at the end of this working document. The suggestion is for this to be done in a 'final act', or Resolution of the IGC, kind of instrument.</i></p> <ol style="list-style-type: none"> 1. The Contracting Parties shall seek the assistance of an existing Multilateral or Regional Fisheries Organisation or Institution in providing secretariat services for implementing and coordinating the provisions of this Agreement.²⁰ Such Organisation shall hereafter be referred to as “the Provider”. 2. Secretariat Assistance shall be based on an Arrangement concluded between the Meeting of the Parties, acting through its Chairperson, and the Provider, as approved by the Meeting of the Parties. 3. The Secretariat Assistance Arrangement shall stipulate suitable financial compensation for the Provider’s services on the basis of a detailed, binding costs estimate agreed by both sides. The agreement shall be concluded for a duration of (5) years and shall be renewable. 4. Subject to Article (-), paragraph 4, the Secretariat Assistance Arrangement shall be funded by the Contracting Parties as follows: <ol style="list-style-type: none"> a) (70/80)% of the costs shall be funded by Contracting Parties that carry out fishing activities in the Area. Each fishing Contracting-Party’s contribution shall be in direct proportion to its share of the total catches recorded in the Area in the previous year. b) (30/20)% shall be funded by non-Fishing Contracting Parties on the basis of equal shares. <p><i>Alternative 2: Rotating Secretariat. This option would not require financial provisions in the text.</i></p> <ol style="list-style-type: none"> 1. The Secretariat of the Meetings of the Parties and its subsidiary bodies shall be provided by the Contracting Party hosting the Meetings for the relevant year. 2. Such Contracting Party shall be responsible for implementing and coordinating the provisions of this Agreement during the intersessional period spanning from the distribution of the official report of the previous Meeting of the Parties until the distribution of the official report of the Meeting of the Parties it has hosted. 3. Each Contracting Party shall keep a complete record of the proceedings of the Meeting of the parties and its subsidiary bodies, as well as a complete archive of any other official documents pertaining to the implementation of this Agreement. <p><i>Alternative 3: Secretariat ensured by one Party on a voluntary basis.</i></p> <ol style="list-style-type: none"> 1. (Name of Party) shall ensure the Secretariat of the Meeting of the Parties. For this purpose, it shall designate an officer as Executive Secretary of this Agreement. (Name of the Party) shall ensure that the Executive Secretary is assisted by qualified staff as required to carry out the tasks inherent to his/her responsibilities. 2. The Executive Secretary shall be responsible for implementing the policies and activities 	<p>Management Organization etc”.</p> <p>Alternative 2. para 3: I presume that this means keeping complete records and does not apply to the preparation of the draft official report of the meeting, which is a Secretariat task.</p>	<p>version of this text incorporating the phrase ‘as required’ as regards the existence of the Secretariat</p> <p>- if the provision is to be retained then Australia has the following views on the existing text:</p> <p>para 1: Australia wishes to leave options open on the drafting so that it is clear that the FAO is one of the options. Australia is happy to defer to the views of the Secretariat on the coverage of the FAO.</p>
--	--	---

²⁰ Source – Article V.1 of the Nauru Agreement.

<p>decided by the Meeting of the Parties, to which he/she shall report thereon. The Executive Secretary shall also act as Secretary to the subsidiary bodies established by the Meeting of the Parties, as required.</p>		
<p style="text-align: center;">[ARTICLE (-) - FINANCES²¹</p> <p>1. The Meeting of the Parties shall / may adopt a budget [as required] for the funding of the operation of this Agreement and any policies and activities decided by the Parties hereunder.</p> <p>2. Where the Meeting of the Parties should, in accordance with paragraph 1, decide the adoption of a budget, the following provisions shall apply:</p> <p>a) the budget exercise shall be annual;</p> <p>b) the amount of the contribution of each Contracting Party to the budget shall be determined in accordance with a scheme adopted by the Meeting of the Parties. In adopting such scheme, the Meeting of the Parties shall give due consideration to the economic status of Contracting Parties which are developing States, and ensure that adequate weight is allocated to Contracting Parties that benefit from fishing in the Area;</p> <p>c) the Meeting of the Parties shall adopt Financial regulations governing the administration of the budget and its related Funds, including</p> <p style="padding-left: 20px;">i. the procedures according to which each Contracting Party shall pay its contribution and</p> <p style="padding-left: 20px;">ii. the criteria and procedures according to which the Meeting of the Parties may accept voluntary contributions, donations or other form of assistance from organizations, individuals and other sources generally or in connection with specific projects or activities relevant to the implementation of this Agreement;</p> <p>d) [the budget shall foresee the expenditure required to fund the Secretariat Assistance Arrangement referred to in Article 9. Correspondingly, the provisions of Article 9 paragraph 4 shall cease to apply;]</p> <p>e) A Member that is in arrears in the payment of its contributions to the budget shall have no</p>	<p>11. Article (-) – Finances</p> <p>Para 2: I would suggest rewording more simply as “The following provisions shall apply to any budget adopted by the Meeting of [Contracting] Parties”.</p> <p>Sub-para b) : The last clause of the sub-para could perhaps be reworded as follows: “economic status of Contracting Parties that are developing States, and ensure that an adequate share of the budget is borne by Contracting Parties that benefit from fishing in the Area;”</p> <p>Sub-para c) ii : “donations or other forms of assistance”</p>	<p>- Australia would support the addition of the words ‘as required’</p> <p>- otherwise Australia is happy to support the drafting suggestions provided by the Secretariat</p>

²¹ Source – Draft SWIOC Agreement, Article 17, adapted. See comments on this language in Part II.

²² Australia expressed reservation to this same language in Article 17 of the SWIOC Draft Agreement.

<p>right to participate in decision making by the Meeting of the Parties and its subsidiary bodies if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding calendar year. [The Meeting of the Parties may, nevertheless, permit such a Contracting Party to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Contracting Party, but in no case shall it extend the right to vote beyond a further calendar year.]²²]</p>		
<p style="text-align: center;">ARTICLE 10 – CONTRACTING PARTY DUTIES²³</p> <p>1. Each Contracting Party shall, in respect of its activities within the Area:</p> <ul style="list-style-type: none"> a) promptly implement this Agreement and any conservation, management and other measures or matters which may be agreed by the Commission; b) take appropriate measures, in order to ensure the effectiveness of the measures adopted in accordance with this Agreement; c) collect and exchange scientific, technical and statistical data with respect to fisheries resources covered by this Agreement and ensure that: <ul style="list-style-type: none"> (i) data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the rules adopted by the Meeting of the Parties in accordance with Article 7.1.d); (ii) appropriate measures are taken to verify the accuracy of such data; (iii) such statistical, biological and other data and information as the Meeting of the Parties may decide is provided annually; and (iv) information on steps taken to implement the conservation and management measures adopted by the Meeting of the Parties is timely provided. <p>2. Each Contracting Party shall make available to the Meeting of the Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this article and, in the case of Coastal States which are Contracting Parties to this Agreement, as regards the measures they have adopted for fishery resources within waters under their jurisdiction adjacent to the Area.</p> <p>3. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall,</p>	<p>12. Article 10 – Contracting Party duties : Para 1 a) “Commission” should read “Meeting of [Contracting] Parties” Sub-para b) delete comma after “measures” Para 2 : “Coastal States that are Contracting Parties” Para 3 : I would suggest rewording the third line etc as follows: “to ensure that its nationals, and fishing vessels owned or controlled by its nationals, fishing in the Area etc”</p>	<p>- Australia is happy to support the drafting suggestions provided by the Secretariat</p>

²³ Source – Article 21 of the Draft SWIOC Agreement. Only items relating to essential elements identified by the Chair and NZ have been retained.

²⁴ Bracketed section as appearing in the Draft SWIOC Agreement.

<p>to the greatest extent possible, take measures, or cooperate, to ensure that its nationals fishing, including fishing vessels owned or controlled by it nationals, in the Area comply with the provisions of this Agreement. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of this Agreement or any conservation and management measure adopted pursuant hereto. A report on the progress of the investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] shall be provided to the Contracting Party making the request and to The Meeting of the Parties as soon as practicable [and in any case within two months of such request] and a report on the outcome of the investigation shall be provided when the investigation is completed. For the purpose of this Article, a national includes a natural or a legal person.²⁴</p>		
<p style="text-align: center;">Article 11 – FLAG STATE DUTIES²⁵</p> <ol style="list-style-type: none"> 1. Each Contracting Party shall take such measures as may be necessary to ensure that: <ol style="list-style-type: none"> a) fishing vessels flying its flag which operate in the Area comply with the provisions of this Agreement and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures; and b) fishing vessels flying its flag do not conduct unauthorized fishing within waters under the national jurisdiction of any Contracting Party. 2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that Contracting Party. A Contracting Party shall authorize the use of vessels flying its flag for fishing beyond waters of national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law. Each Contracting Party shall take appropriate measures in respect of vessels flying its flag which are in accordance with measures adopted pursuant to this Agreement and which give effect thereto, and which take account of existing international practices. 3. Each Contracting Party shall maintain a record of fishing vessels entitled to fly its flag and authorized to fish in the Area for fishery resources to which this Agreement applies, and shall ensure that the information for all such vessels specified in Annex I is entered in that record. Contracting Parties shall notify this information to the Secretariat, in accordance with such procedures as may be agreed by the Meeting of the Parties. The Secretariat shall 	<p>13. Article 11 – Flag State Duties : Para 1. a) : “undermines”.</p> <p>Para 3: Perhaps the term Secretariat should be defined in Article 1.</p> <p>Para 4: last sentence: Typo. Lower case for “The”.</p>	<p>- Australia is happy to support the drafting suggestions provided by the Secretariat, although noting that the resolution of the drafting of para 3 will depend largely on the resolution of the drafting of the article concerning the secretariat.</p>

²⁵

Source – Draft SWIOC Agreement, Article 22, modified. Some comments by Australia incorporated.

<p>promptly circulate this information to the other Contracting Parties and shall keep an updated registry of notified vessels²⁶.</p> <p>4. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by fishing vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted pursuant thereto. A report on the progress of the investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] shall be provided to the Contracting Party making the request and to The Meeting of the Parties as soon as practicable [and in any case within two months of such request] and a report on the outcome of the investigation shall be provided when the investigation is completed.²⁷</p> <p>5. Each Contracting Party whose fishing vessels operate in the Area shall make available to each annual Meeting of the Parties a report on its fishing activities in the Area during the previous season / year, in conformity with the requirements determined by the Meeting of the Parties. Such requirements shall include reporting on fishing vessels and fishing areas, as well as on total catches by species made by its fleet.²⁸</p>		
<p style="text-align: center;">ARTICLE 12 – PORT STATE DUTIES</p> <p>1. Measures taken by a Port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures, a port State shall not discriminate in form or in fact against the fishing vessels of any State.</p> <p>2. Each Contracting Party shall, in accordance with measures agreed by the Meeting of the Parties, <i>inter alia</i>, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.</p> <p>3. Contracting Parties shall not permit landings, transshipment, or supply services in relation to vessels unless they can be satisfied that fish on board the vessel have been caught in a manner consistent with the measures adopted by pursuant to this Agreement.</p> <p>4. Contracting Parties shall provide assistance to Flag State Contracting Parties, as reasonably practical and in accordance with the national laws of the Port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal under their jurisdiction and the Flag State of the vessel requests them to provide assistance in ensuring compliance with the provisions of this Agreement.</p>	<p>14. Article 12 – Port State Duties : Perhaps the term “Port State Contracting Party” should be used throughout for clarity.</p> <p>Para 3 : Typo. Delete the word “by”.</p>	<p>- Port State Duties – Australia notes that this problem could also be resolved by defining ‘Port State’</p> <p>- para 3 - Australia is happy to support the drafting suggestion provided by the Secretariat. Australia would also suggest replacing the words ‘can be’ with ‘are’</p>

²⁶ NZ Proposed bullet point. In the event a rotating secretariat is agreed, the registry should be transferred from incumbent to incumbent Contracting Party – e.g. electronic support.

²⁷ Same provision, modified, as that included for “nationals” in the preceding Article.

²⁸ NZ Bullet point.

<p>5. In the event that a Contracting Party considers that a vessel of another Contracting Party making use of its ports or offshore facilities has violated a conservation and management or control measure adopted pursuant to this Agreement, it shall draw this to the attention of the flag State concerned and of the Meeting of the Parties. The Contracting Party shall provide the flag State and the Meeting of the Parties with full documentation of the matter, including any record of inspection. In such cases, the flag State shall transmit to the Meeting of the Parties details of actions it has taken in respect of the matter.</p> <p>6. Nothing in this article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.</p>		
<p style="text-align: center;">ARTICLE 13 – SPECIAL REQUIREMENTS OF DEVELOPING STATES²⁹</p> <p>1. The Contracting Parties shall give full recognition to the special requirements of developing States [in the region] in relation to the conservation and management of fishery resources and the sustainable development of such resources.</p> <p>2. The Contracting parties recognize, in particular:</p> <p>a) the vulnerability of developing States [in the region] which are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or parts thereof;</p> <p>b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers; and</p> <p>c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States [in the region]</p> <p>3. Cooperation by the Contracting Parties under the provisions of this Agreement and through other subregional or regional organizations involved in the management of fisheries resources may include action for the purposes of:</p> <p>a) enhancing the ability of developing States [in the region] to conserve and manage fishery resources and to develop their own fisheries for such resources; and</p> <p>b) assisting developing States [in the region] to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Agreement.</p> <p>4. Cooperation with developing States [in the region] for the purposes set out in this article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:</p>	<p>15. Article 13 – Special Requirements of Developing States: Para 2 Typo “Contracting Parties”. Sub-para a) I suggest you reword as follows, for grammatical reasons: “developing States [in the region] that are dependent”</p>	<p>- Australia is happy to support the drafting suggestions provided by the Secretariat</p>

²⁹ Source – Draft SWIOC Agreement, Article 20, modified. All comments by Australia incorporated.

<ul style="list-style-type: none"> a) improved conservation and management of the fishery resources, which can include the collection, reporting, verification, exchange and analysis of fisheries data and related information; b) improved information collection and management of the impact of fishing activities on the marine environment; c) stock assessment and scientific research; and d) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology. 		
<p style="text-align: center;">ARTICLE 14 – TRANSPARENCY³⁰</p> <ol style="list-style-type: none"> 1. The Contracting Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement. 2. Coastal States with waters or seabed under national jurisdiction that are adjacent to or surrounded by the Area which are not Contracting Parties to this Agreement shall be entitled to participate as observers in the Meetings of the Parties and of subsidiary bodies. 3. Intergovernmental organisations concerned with matters relevant to the implementation of this Agreement, in particular the Food and Agriculture Organisation of the United Nations, the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean, and Regional Fisheries Organisations with competence over areas of the high seas bordering the Area, shall be entitled to participate as observers in the Meetings of the Parties and of subsidiary bodies 3. Representatives from non-governmental organizations concerned with matters relevant to the implementation of this Agreement shall be afforded the opportunity to participate in the Meetings of the Parties and of subsidiary bodies as observers or otherwise as determined by the Contracting Parties. The rules of procedure of the Meeting of the Parties and its subsidiary bodies shall provide for such participation. The procedures shall not be unduly restrictive in this respect. 4. Observers shall be given timely access to pertinent information subject to the rules and procedures, including those concerning confidentiality requirements, which the Meeting of the Parties may adopt. 	<p>16. Article 14 – Transparency para 2: Similarly for grammatical reasons: “by the Area <u>that</u> are not Contracting Parties”.</p>	<p>- Australia is happy to support the drafting suggestion provided by the Secretariat</p>

³⁰

Source – Draft SWIOC Agreement, Article 16, modified.

<p style="text-align: center;">ARTICLE 15 – FISHING ENTITIES</p> <p><i>Alternative 1 – Source: Australian proposal to draft SWIOC Agreement, adapted.³¹</i></p> <p>1. Any fishing entity whose vessels (fish or intend to fish) (have fished in the Area for fishery resources to which this Agreement applies at any time during the four years preceding the adoption of this Agreement)³² may express its firm commitment to abide by the terms of this Agreement and comply with any conservation and management measures adopted pursuant thereto, by:</p> <p>a) signing, during the period referred to in Article 22, paragraph 1 of this Agreement, an instrument in the terms set out at Annex III; and/or</p> <p>b) during or after the above-mentioned period, providing a written communication to the Depositary in the terms set out at Annex IV. The Depositary shall promptly provide a copy of this communication to all signatories and Parties.</p> <p>2. The commitment expressed pursuant to paragraph 1 shall be effective from the date referred to in Article 25, or on the date of the written communication referred to in paragraph 1, whichever is later.</p> <p>3. Any fishing entity referred to above may express its firm commitment to abide by the terms as it may be amended pursuant to Article 20 by providing a written communication to the Depositary in the terms set out at Annex V.</p> <p>4. The commitment expressed pursuant to paragraph 3 of this Article shall be effective from the date referred to in Article 20, paragraph 3, or on the date of the communication referred to in paragraph 3 of this Article, whichever is later.</p> <p><i>Alternative 2 – Source, paragraph 1 of Annex I, MHLIC Convention, adapted.³³</i></p> <p>1. After the entry into force of this Agreement, any fishing entity whose vessels fish or intend to fish for fishery resources in the Area, may, by a written instrument delivered to the Depositary, express its firm commitment to be bound by the terms of this Agreement. Such commitment shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the Depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.</p>	<p>17. Article 15 – Fishing Entities Alt. 2 para 5/2 and 6/3 (I don’t understand the numbering) Add the words “itself” and “themselves” after the words “commit” and “committed” respectively.</p> <p>[editing note – the numbering is intended to reflect the fact that the paragraphs are common to both alternatives]</p>	<p>footnote 31: As regards Australia’s proposal and the additions proposed by the Chair Australia suggests modifying the Chair’s suggestion to ‘have fished in the Area for fisheries resources at any time during the two years preceding the adoption of this agreement, or whose vessels will fish in the Area for fisheries resources during the period for which the commitment is made,’. The treaty needs a forward looking element – or a party could only join by breaching the agreement and fishing outside its regulations.</p> <p>Alternative 2: We agree that alternative 2 is simpler and Australia has no strong preference as to the general structure of the provision – we would note that Alternative 1, although a lengthier procedure does set out clearly what is involved. If retained suggest that the period for withdrawal be consistent with that in Article 26.</p> <p>- para 7/4 - rather than draft an additional paragraph on dispute settlement (para 7/4) fishing entities should just be worked into Article 19. ‘[E]ither’ should be replaced with ‘any’ to accommodate situations where more</p>
--	---	---

³¹ If this option is retained, three annexes should be added to the Agreement text (III to V). I have not supplied proposals for the commitment instruments – see next note, but a useful model may be found in the texts annexed to the IATTC Resolution on the Adoption of the Antigua Convention.

³² The first text in brackets corresponds to the Australian proposal, the second is the Chair’s alternative proposal. My proposal tends to ensure that if required, all sides interested in the fisheries can cooperate under the Agreement, even if this interest develops in the future.

³³ The Chair is of the view that at this stage, this alternative is simpler and more appropriate. SIOFA signatories or Contracting Parties would have the opportunity to agree on precise commitment procedures upon a fishing Entity’s manifestation of interest, either during the interim period or after entry into force of the Agreement, through a decision of the Meeting of the Parties.

<p>5/2. A fishing entity which has committed to be bound by the terms of this Agreement, may participate in the Meeting of the Parties and its subsidiary bodies, and partake in decision-making. [Where applicable, the fishing entity concerned shall contribute to the budget in accordance with Article (-).]</p> <p>6/3. Articles 4, (9)³⁴, 10, 11, 12, 13, 14, 16 and 17 apply, mutatis mutandis, to fishing entities that have committed to be bound by the terms of this Agreement in accordance with the procedures established in this Article.</p> <p>7/4. If a dispute concerning the interpretation or application of this Agreement involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.³⁵</p>		<p>than Party is party to the dispute.</p>
<p>ARTICLE 16 – COOPERATION WITH OTHER ORGANISATIONS³⁶ The Contracting Parties, acting jointly under this Agreement, shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular with the</p>	<p>18. Article 16 – Cooperation with other Organizations : Typo. Delete the word “of” in</p>	<p>- Australia is happy to support he drafting suggestion provided by the Secretariat</p>

³⁴ If the contracting out option is retained in relation to the Secretariat, fishing entities should also be required to contribute funds.

³⁵ Source, paragraph 3 of Annex I of the MHLC Convention. The assumption is that a dispute on the interpretation of the Agreement can only involve a fishing entity that has committed, so no more lengthy references in this sense are included. Those references arenecessary in the two previous paragraphs.

³⁶ Source – Draft SWIOC Agreement, Article 15, slightly modified

<p>Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean and any other Regional Fisheries Organisation with competence over high seas waters bordering the Area. The Contracting Parties may invite the organizations referred to as well as of other intergovernmental or non-governmental organizations to attend the Meeting of the Parties or meetings of the subsidiary bodies.</p>	<p>the last sentence.</p>	
<p>ARTICLE 17 – GOOD FAITH AND ABUSE OF RIGHTS³⁷ Each Contracting Party shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of rights.</p>		
<p>ARTICLE 18 – RELATION TO OTHER AGREEMENTS <i>Alternative 1 - Source – Draft SWIOC Agreement, Article 28</i> This Agreement shall not alter the rights and obligations of Contracting Parties which arise from the 1982 Convention and other agreements compatible with the 1982 Convention and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Agreement. <i>Alternative 2 – Australian proposal</i> Nothing in this Agreement shall prejudice the rights and obligations of States under the 1982 Convention or the 1995 Agreement.</p>		<p>- Australia would prefer the shorter version to avoid arguments concerning (i) what other agreements may be compatible with the 1982 Convention; and (ii) what other agreements ‘do not affect the enjoyment by other Members of their rights or the performance of their obligations under this Convention’.</p>
<p>ARTICLE 19 – INTERPRETATION AND SETTLEMENT OF DISPUTES <i>Alternative 1- Source: Draft SWIOC Agreement, Article 33</i> 1. If any dispute arises between two or more Contracting Parties concerning the interpretation or implementation of this Agreement, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. 2. In cases where a dispute between two or more Contracting Parties is agreed by the parties to the dispute to be of a technical nature, and the Contracting Parties are unable to resolve the dispute among themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Meeting of the Parties. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. 3. Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in this Article, such dispute shall, at the request of any party to the dispute, be</p>		<p>- Australia would prefer the shorter draft, which it views as both clearer and shorter. Australia notes the following issues with the existing SWIOC provision</p> <ul style="list-style-type: none"> • Paragraph 1 is very loosely drafted and seems to add nothing other than to express a desire that disputes should be settled by amicable means; • Paragraph 3 does not set timeframes for the resolution of disputes and key terms such as what is a ‘reasonable time’ in paragraph 3 are left open. Lengthy prescribed periods for consultation also make it difficult to

³⁷

Source – Draft SWIOC Agreement, Article 27.

<p>submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to these instruments.</p> <p>4. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Agreement, of the 1982 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.</p> <p><i>Alternative 2 – Australian proposal (reference to ‘Members’ changed to ‘Contracting Parties’)</i> Contracting Parties shall attempt to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more Straddling Stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to these instruments.</p>		<p>obtain provisional measures where urgent action is warranted; and</p> <ul style="list-style-type: none"> • Paragraph 4 appears to unnecessarily limit the scope for decision making by any such court or tribunal.
<p style="text-align: center;">ARTICLE 20 – AMENDMENTS³⁸</p> <p>1. Any Contracting Party may propose an amendment to the Agreement by providing to the Depositary³⁹ the text of a proposed amendment at least sixty (60) days in advance of a Meeting of the Parties. The Depositary shall provide a copy of this text to all other Contracting Parties promptly.</p> <p>2. Amendments to the Agreement shall be adopted by consensus of all Contracting Parties.</p> <p>3. Amendments to the Agreement shall enter into force ninety (90) days after all Contracting Parties which held this status at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.</p>		
<p style="text-align: center;">ARTICLE 21 - ANNEXES⁴⁰</p> <p>1. The Annexes to this Agreement form an integral part thereof and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annexes thereto.</p> <p>2. Any Contracting Party may propose an amendment to an Annex to the Agreement by</p>		<p>- Australia would propose that the procedures for Annexes to the Agreement be the same as for the text of the Agreements. This would require the</p>

³⁸ Source – Article XXXIV of the Antigua (IATTC) Convention.

³⁹ This role for the Depositary has a precedent in the CCAMLR Convention.

⁴⁰ Source – Article XXXV of the Antigua (IATTC) Convention

<p>providing to the Depositary the text of a proposed amendment at least sixty (60) days in advance of a Meeting of the Parties. The Depositary shall provide a copy of this text to all other Contracting Parties promptly.</p> <p>4. Unless otherwise agreed, amendments to an Annex shall enter into force for all Contracting Parties ninety (90) days after their adoption by the Meeting of the Parties.</p>		<p>deletion of paragraphs 2 and 3. As the text of the annexes is to form an integral part of the treaty the procedures for amendment will require the same formal procedures to be undertaken in most Contracting Parties.</p> <p>Alternatively a form of words may be open to indicate that the annexes are intended to be of less than treaty status and thus capable of amendment by less formal mechanisms.</p>
<p>ARTICLE 22 – SIGNATURE RATIFICATION, ACCEPTANCE AND APPROVAL⁴¹</p> <p>1. This Agreement shall be open for signature by</p> <p>a) <i>(the Participants in the Inter-Governmental Consultation on the Southern Indian Ocean Fisheries Agreement. – LIST)</i> and</p> <p>b) by any other State having jurisdiction over waters bordering or enclosed by the Area,</p> <p>and shall remain open for signature for twelve months from the (date of opening for signature).</p> <p>2. This Agreement is subject to ratification, acceptance or approval by the signatories.</p> <p>3. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.</p>	<p>19. Article 22 – Signature, Ratification, Acceptance and Approval para 1: Would it not be better to have some more generic description of which States and REIO’s may become Contracting Parties, rather than just list Participants at the Consultation? What about new entrants?</p>	
<p>ARTICLE 23 – ACCESSION⁴²</p> <p>1. This Agreement shall be open for accession by any State or Regional Economic Integration Organisation interested in research or fishing activities in relation to the fishery resources to which this Agreement applies.</p> <p>2. Instruments of accession shall be deposited with the Depositary.</p>	<p>20. Article 23 – Accession para 1: I would suggest adding the words “from the date on which this Agreement is closed for signature” at the end of the sentence, for the sake of clarity.</p>	<p>- Australia would not see as required, although has no real objection to, the suggestion by the Secretariat should other delegations wish to include these words.</p>
<p>ARTICLE 24 – THE DEPOSITARY⁴³</p> <p>1. The Director-General of the Food and Agriculture Organisation of the United Nations shall be the Depositary of this Agreement and any amendments or revisions to the Agreement.</p>		

⁴¹ Source – Article 34 WCPFC Convention.

⁴² Source, CCAMLR Convention, Article XXIX.

⁴³ Source – Australian proposal to Draft SWIOC Agreement.

<p>The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.</p> <p>2. The Depositary shall inform all signatories of this Agreement and Fishing Entities referred to in Article 15 of signatures, ratifications and instruments deposited under Articles 22 and 23 and of the date of entry into force of the Agreement under Article 25.</p>		
<p style="text-align: center;">ARTICLE 25 – ENTRY INTO FORCE⁴⁴</p> <p>This Agreement shall enter into force as from the date of receipt by the Depositary of the (x) instrument of ratification.</p>		
<p style="text-align: center;">ARTICLE 26 – WITHDRAWAL⁴⁵</p> <p>Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary who shall immediately inform all the Contracting Parties of such withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Depositary.</p>		
<p style="text-align: center;">ARTICLE 27 – TERMINATION⁴⁶</p> <p>This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below three.</p>		
	<p>22. General - Do you wish to have an Article on Non-Parties, as in the original draft agreement? I note that this was not included in the Chair's Elements for a draft agreement.</p>	<p>- Australia would support provisions related to non-members.</p>
<p>IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.</p> <p>DONE at (place) on this --th day of (month), (year), in English and French, both texts being equally</p>		

⁴⁴ Draft SWIOC Agreement, Article 31.

⁴⁵ Draft SWIOC Agreement, Article 32.

⁴⁶ Draft SWIOC Agreement, Article 34.

authentic.		
<p style="text-align: center;">ANNEX I - INFORMATION REQUIREMENTS⁴⁷</p> <p>1. The following information shall be provided to the Meeting of the Parties in respect of each fishing vessel referred to in Article 11, paragraph 3:</p> <ul style="list-style-type: none"> a) Name of fishing vessel, registration number, previous names (if known), and port of registry; b) Name and address of owner or owners; c) Name and nationality of master; d) Previous flag (if any); e) International Radio Call Sign; f) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number); g) Colour photograph of vessel; h) Where and when built; i) Type of vessel; j) Normal crew complement; k) Type of fishing method or methods; l) Length; m) Moulded depth; n) Beam; o) Gross register tonnage; 		

⁴⁷ Source – Annex IV MHLC Convention

⁴⁸ Source – Annex 1 of the Antigua (IATTC) Convention.

<ul style="list-style-type: none"> p) Power of main engine or engines; q) The nature of the authorization to fish granted by the flag State; r) Carrying capacity, including freezer type, capacity and number and fish hold capacity. <p>2. The following information shall also be promptly notified to the Secretariat⁴⁸:</p> <ul style="list-style-type: none"> a) any additions to the record; b) deletions from the record by reason of: <ul style="list-style-type: none"> i. the voluntary relinquishment or non-renewal of the fishing authorization by the owner of the vessel; ii. the withdrawal of the fishing authorization issued to the vessel in accordance with Article 11, paragraph 2; iii. the fact that the vessel is no longer entitled to fly its flag; iv. the scrapping, decommissioning or loss of the vessel; and v. any other reason, specifying which of the reasons listed above are applicable. 		



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
FISHERIES
External policy and markets
International and regional arrangements

Brussels, 9 June 2004
FISH/B-2/ SE/ms D(2004) 12205

Ms Fuensanta CANDELA
Chairperson SWIOFC Consultations
European Commission
Brussels

Subject: SWIOFC process

Dear Ms Candela,

The European Community wishes firstly to express its appreciation for the document you have circulated to Parties as well as your cover letter which raised a number of fundamental issues concerning the nature of future multilateral cooperation in the South West Indian Ocean.

As you are aware, the Community has been to the forefront in the establishment and strengthening of Regional Fisheries Organisations (RFOs) as the most effective manner of ensuring the conservation and management of fisheries resources, inter alia, on the High Seas. We continue to consider that through RFOs we can ensure a strong multilateral cooperation between all Parties involved in the fisheries in a transparent and coherent manner.

This approach has motivated our involvement throughout the different sessions of the International Consultation for the South West Indian Ocean. The fundamental issue posed now is what form that multilateral cooperation should take, and one such approach is the International Agreement which forms the basis for your document and reflects the discussions at the Nairobi Conference.

We have witnessed in recent times in accordance with International Fisheries Law the establishment of a range of RFOs, or the strengthening of existing ones, to bring them up to date with international fisheries developments. Underpinning and justifying these initiatives has been a sound scientific and fisheries information on the nature of the stocks, and the current and historical level of fishing activity. The approach outlined in your excellent document reflects more a full blown Fisheries Convention text. The document is well thought out and structured. However, we consider that such a detailed instrument may be pre-mature for the SWIOFC, particularly in a context where our understanding is that the current level of fishing activity in the area of international waters involved, is low. To establish such an international agreement instrument, which would require ratification by the Parties, without having a clear vision of the real fishing effort or activity, in our view, requires further consideration by Parties.

A more appropriate approach might be, at this stage, the adoption of a Resolution laying down Interim Measures or Arrangements which would guarantee the necessary level of international cooperation for the stocks and area. Under such arrangements, the necessary information on catch and effort submitted by the parties could be consolidated by either a designated Party or an existing RFO e.g. Indian Ocean Tuna Commission, and disseminated to all interested parties. A regular Annual Consultation of parties could be foreseen in order to review that information. Should the development of the fisheries over time so justify, we could then move to a more formal International Agreement. This approach is, in our view, a more operational and flexible one and it will crucially allow us in the short term to have a better picture of the fishing activities.

We look forward to a constructive and realistic debate at the forthcoming Session in Seychelles during which the pros and cons of the different approaches can be analysed in a dispassionate way. I would be obliged if you would circulate this letter to parties to the Nairobi Session.

Yours sincerely,

“signed”
Staffan EKWALL
EC representative of the
SWIOFC consultations

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p style="text-align: center;"><i>PART I</i> DRAFT AGREEMENT SOUTHERN INDIAN OCEAN FISHERIES AGREEMENT (SIOFA)</p> <p style="text-align: center;">PREAMBLE⁴⁹</p> <p>The Contracting Parties HAVING A MUTUAL INTEREST in the proper management, long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean, and desiring to further the attainment of their objectives through international cooperation;</p> <p>TAKING INTO CONSIDERATION that the coastal States have established waters of national jurisdiction in accordance with the United Nations Convention on the Law of the Sea, 1982 and general principles of international law[,] within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fisheries resources as well as conserving living marine resources upon which fishing has an impact;⁵⁰</p> <p>[NOTING the principles stated in Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992;]⁵¹</p> <p>RECALLING THE RELEVANT PROVISIONS of the United Nations Convention on the Law of the Sea of 10 December 1982; the 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</p>	<p>TAKING INTO CONSIDERATION that Coastal States have areas under national jurisdiction in accordance with the United Nations Convention on the Law of the Sea, 1982 and general principles of international law, within which they exercise their sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources and conserving living marine resources upon which fishing has an impact;</p>	<ul style="list-style-type: none"> • Replace 'the coastal States have established waters of national jurisdiction' with 'Coastal States have areas under national jurisdiction' • Insert 'and' after exploring; delete 'as well as' after 'resources'

⁴⁹ Source – draft SWIOC Agreement, Preamble. Paragraphs relating to FAO background omitted.

⁵⁰ With proposed editing by Australia.

⁵¹ Australia expressed a reservation on the need for this language.

⁵² Text proposed by Australia.

⁵³ Referring in the last line to the 1995 Agreement or to « this agreement ») Has cross-reference to two different agreements when it uses the term ' this agreement' and appears to have incorrect reference to 'this Convention'?

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995; and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;</p> <p>RECALLING FURTHER Article 17 of the 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, and the need for States that are not Parties to this Agreement to apply the conservation and management measures adopted under this Convention and not to authorise vessels flying their flag to engage in fishing activities which are inconsistent with the conservation and sustainable use of fisheries resources which are the subject of this Convention.⁵²</p> <p>RECOGNIZING economic and geographical considerations and the special requirements of developing States and their coastal communities, for equitable benefit from fishery resources;</p> <p>DESIRING cooperation between the Coastal States and with all other States, Organisations and Fishing Entities having a real interest in the fishery resources of the Southern Indian Ocean to ensure compatible conservation and management measures;</p> <p>BEARING IN MIND that the achievements of the above will contribute to the realization of a just and equitable economic order in the interests of all humankind, and in particular the special interests and needs of developing States;</p> <p>CONVINCED that the conclusion of a multi-lateral Agreement for the long-term conservation and sustainable use of fishery resources in the Southern Indian Ocean would best serve these objectives;</p> <p>Agree as follows:</p>	<p>RECALLING FURTHER Article 17 of the 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 1995, and the need for States not Party to that Agreement to apply the conservation and management measures adopted under it and to not authorise vessels flying their flag to engage in fishing activities inconsistent with the conservation and sustainable use of fisheries resources [which are the subject of that Agreement [(or 'this Agreement?')⁵³]</p> <p>CONVINCED that the conclusion of a multilateral agreement for the long-term conservation and sustainable use of fishery resources beyond areas under national jurisdiction in the Southern Indian Ocean would best serve these objectives;</p>	<p>To improve clarity of cross-references:</p> <ul style="list-style-type: none"> • Insert '1995' to UNFSA reference • Replace 'this Agreement' with 'that Agreement'; • Remove references to 'this Convention' • Inconsequential grammatical modifications <p>Insert: 'beyond areas under national jurisdiction' after the word 'resources'.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p style="text-align: center;">ARTICLE 1 – DEFINITIONS⁵⁴</p> <p>For the purposes of this Agreement:</p> <p>(a) '1993 Compliance Agreement' means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the FAO Conference in 1993;</p> <p>(b) '1982 Convention' means the United Nations Convention on the Law of the Sea of 10 December 1982</p> <p>(c) '1995 Agreement' means the 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, 1995;</p> <p>(d) 'Code of Conduct' means the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;</p> <p>(e) 'Contracting Parties' means any State or regional economic integration organisation which has consented to be bound by this Agreement and for which the Agreement is in force;</p> <p>(f) 'Regional economic integration organisation' means a regional economic integration organisation to which all its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;</p> <p>(g) 'Fishing' means:</p> <p style="padding-left: 20px;">(v) the actual or attempted searching for, catching, taking or harvesting of fishery resources;</p> <p style="padding-left: 20px;">(vi) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;</p> <p style="padding-left: 20px;">(vii) placing, searching for or recovering any aggregating</p>	<p>(a) '1993 Compliance Agreement' means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Food and Agriculture Organization Conference in 1993;</p> <p>(e) 'Contracting Parties' means States or regional economic integration organizations which have consented to be bound by this Agreement and for which the Agreement is in force;</p>	<p>Insert full name of FAO the first time it appears in the body of the agreement</p> <p>Para (e) verb agreement with defined term (or vice versa)</p>

⁵⁴

Source – draft SWIOC Agreement, Article 1.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>device for fishery resources or associated equipment including radio beacons;</p> <p>(viii) any operation at sea in support of, or in preparation for, any activity described in this definition, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel; or</p> <p>(v) the use of an aircraft in relation to any activity described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;</p> <p>(h) 'Fishing vessel' means any vessel used or intended for fishing, including mother ships, any other vessels directly engaged in such fishing operations, and vessels engaged in transshipment;</p> <p>(i) 'Fishery resources' means resources of fish, molluscs, crustaceans and other sedentary species within the Area, excluding:</p> <p>(i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77 paragraph 4 of the 1982 Convention; and</p> <p>(ii) highly migratory species listed in Annex I of the 1982 Convention;</p> <p>(j) 'Area' means the area to which this Agreement applies, as prescribed in Article 4;</p> <p>(k) 'Transshipment' means unloading of all or any of the fishery resources on board a fishing vessel to another vessel whether at sea or in port.</p>	<p>(h) 'Fishing vessel' means any vessel used or intended for fishing, including a mother ship, any other vessel directly engaged in such fishing operations, and any vessel engaged in transshipment;</p> <p>'Area' means the area to which this Agreement applies, as prescribed in Article 3;</p>	<p>Para (h) verb agreement with defined term.</p> <p>Retain the words 'and other sedentary species'</p> <p>Cross reference amended</p>
<p style="text-align: center;">ARTICLE 2 – OBJECTIVES⁵⁵</p> <p>The objectives of this Agreement are to ensure the long term conservation and sustainable use of the fishery resources in the Area through cooperation among the Contracting Parties, and to promote the sustainable development</p>		

55

Source – Draft SWIOC Agreement, Article 2.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>of fisheries in the Area, taking account of the needs of developing states [of the region] that are party to this Agreement.</p>		<p>Retain the words 'of the region'</p>
<p style="text-align: center;">ARTICLE 3 – AREA OF APPLICATION⁵⁶</p> <p>1. This Agreement applies to the Area bounded by a line joining the following points along parallels of latitude and meridians of longitude, excluding the areas under national jurisdiction of Contracting Parties bordering on that area:</p> <p style="padding-left: 40px;">Commencing at the landfall on the continent of Africa of the parallel of 30° East; from there north-north-east along the coast of Africa to its intersection with the parallel of 10° North; from there east along that parallel to its intersection with the meridian of 65° East; from there south along that meridian to its intersection with the equator; from there east along the equator to its intersection with the meridian of 80° East; from there south along that meridian to its intersection with the parallel of 20° South; from there east along that parallel to its landfall on the continent of Australia; from there south and then east along the coast of Australia to its intersection with the meridian of 120° East; from there south along that meridian to its intersection with the parallel of 55° South; from there west along that parallel to its intersection with the meridian of 80° East; from there north along that meridian to its intersection with the parallel of 45° South; from there west along that parallel to its intersection with the meridian of 30° East; from there north along that meridian to the point where the line began as shown in the map in the Annex 1 to this Agreement.</p> <p>2. Where for the purpose of this Agreement it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).</p>	<p>1. This Agreement applies to the Area bounded by a line joining the following points along parallels of latitude and meridians of longitude, excluding areas under national jurisdiction:</p>	<p>Replace 'excluding the areas under national jurisdiction of Contracting Parties bordering on that area' with 'excluding areas under national jurisdiction'.</p>
<p style="text-align: center;">ARTICLE 4 – GENERAL PRINCIPLES⁵⁷</p>		

⁵⁶ Source – Draft SWIOC Agreement, Article 4.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>In giving effect to the duty to cooperate in accordance with the 1982 Convention and international law, the Contracting [P]arties shall, individually and jointly, apply in particular the following principles:</p> <ul style="list-style-type: none"> h) adopt measures based on the best scientific evidence available to ensure the long term conservation of fishery resources, taking into account the sustainable use of such resources and implementing an ecosystem approach to their management; i) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources; j) apply the precautionary approach in accordance with the Code of Conduct and the 1995 Agreement; k) maintain stocks at levels that are capable of producing the maximum sustainable yield, and rebuild depleted stocks to the said levels; l) ensure that fishing practices and management measures take due account of the need to minimize the harmful impact of fishing activities on the marine environment; m) protect biodiversity in the marine environment; n) give full recognition to the special requirements of developing States as set out in Article 14. 	<p>g) give full recognition to the special requirements of developing States of the region.</p>	<p>Replace the words 'as set out in Article 14' with 'of the region'.</p>
<p>ARTICLE 5 – MEETING OF THE PARTIES⁵⁸</p> <p>1. The Contracting Parties shall meet periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto.</p>		

⁵⁷ Source – Draft SWIOC Agreement, Article 6, modified to include elements proposed by NZ.

⁵⁸ Source – Article VII of the AIDCP Agreement and Article 6 Draft SWIOC Agreement.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>2. The ordinary Meeting of the Parties shall take place at least once a year, and to the extent practicable, in [back-to-back] with meetings of the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean.</p> <p>3. The Parties may also hold extraordinary meetings when deemed necessary. These meetings shall be convened at the request of any Party, provided that such request is supported by a majority of the Parties.</p> <p>4. The Meeting of the Parties shall be held when a quorum is present. Quorum is reached when a majority of the Parties are present. This rule shall also apply to meetings of subsidiary bodies established under this Agreement.</p> <p>5. The Meeting of the Parties shall elect a Chairperson and two Vice-Chairpersons from among the Contracting Parties with the terms and conditions of appointment to be determined by the Meeting. They shall hold office for two years and may be re-elected. The Chairperson and a Vice-Chairperson shall not be from the same Contracting Party.⁵⁹</p> <p>6. The Meeting of the Parties may adopt and amend its own Rules of Procedure and those of its subsidiary bodies.</p>	<p>2. The ordinary Meeting of the Parties shall take place at least once [every two years], and to the extent practicable, back-to-back with meetings of the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean.</p> <p>4. The Meeting of the Parties shall be held when a quorum is present. This rule shall also apply to meetings of subsidiary bodies established under this Agreement.</p> <p>7. The Meeting of the Parties may decide upon, and amend as occasion may require, financial regulations for the conduct of the Meeting of the Parties and for the exercise of its functions. Such regulations shall set out:</p> <p>a) the procedures according to which each Contracting Party shall pay [a] contribution; and</p> <p>b) the criteria and procedures according to which the Meeting of the</p>	<p>There may not be a need for parties to meet annually. We welcome discussion on this point.</p> <p>Delete sentence defining 'quorum'.</p> <p>Insert new paragraph 7. Text based on Chair's text Article (-) paragraph 2(c). This amendment to the Chair's text would introduce flexibility to the agreement and would</p>

⁵⁹ Source – Draft SWIOC Agreement, Article 11.6, slightly modified.

⁶⁰ Or [an adequate share of the budget is borne by]

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	<p>Parties may accept voluntary contributions, donations or other form of assistance from organizations, individuals and other sources generally or in connection with specific projects or activities relevant to the implementation of this Agreement.</p> <p>8. Where the Meeting of the Parties, adopts a budget in accordance with paragraph 7, the following provisions shall apply:</p> <p>f) the budget exercise shall be [calculated on an annual basis];</p> <p>g) the amount of the contribution of each Contracting Party to the budget shall be determined in accordance with a scheme adopted by the Meeting of the Parties. In adopting such a scheme, the Meeting of the Parties shall give due consideration to the economic status of Contracting Parties which are developing States, and ensure that [adequate weight is allocated to Contracting Parties that benefit from fishing in the Area]⁶⁰;</p>	<p>reduce the need to define administrative costs at this point.</p> <p>Insert new paragraph 8. Text taken in large part from Chair's text Article (-) paragraph 2(b). This amendment to the Chair's text would introduce flexibility to the agreement and would reduce the need to estimate costs and contributions at this point.</p>
<p>ARTICLE 6 – FUNCTIONS OF THE MEETING OF THE PARTIES⁶¹</p> <p>Subject to Article 4, the Meeting of the Parties shall:</p> <p>n) review the state of fishery resources, including their abundance and the level of their exploitation;</p> <p>o) [as required,] promote and co-ordinate [and undertake]⁶²- research activities on the fishery resources occurring in the Area and in contiguous areas, including discarded catch and the impact of fishing on the marine environment, taking into account the environmental and oceanographic characteristics of the Area;</p>	<p>1. The Meeting of the Parties shall:</p> <p>b) promote and co-ordinate research activities as required, on the fishery resources occurring in the Area and in contiguous areas, including discarded catch and the impact of fishing on the marine environment;</p>	<p>Delete 'Subject to Article 4,'</p> <p>Reposition 'as required'.</p> <p>Delete 'and undertake' for the reasons mentioned in footnote 14 to the Chair's text.</p> <p>Relocate the words 'taking into account the environmental and oceanographic characteristics of the Area;' to subparagraph (c) of NZ text.</p>

⁶¹ Source – Draft SWIOC Agreement, Article 7, modified – The areas cited in the 'bullet points' identified by chair and NZ at the 3rd IGC-Nairobi have been preserved in this draft.

⁶² On the basis of a light agreement and the event that the future arrangement is not based on an autonomous centralised budget, the possibility for the undertaking of research is limited.

⁶³ A relatively similar provision was included in paragraph 14 of Article 7 of the Draft SWIOC Agreement. This language reflects the proposal of NZ for this MoP function.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>p) [as required,] formulate and adopt conservation and management measures necessary for ensuring the long term sustainability of the fishery resources based on the best scientific evidence available;</p> <p>q) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;</p> <p>r) develop rules for the collection and verification of scientific and statistical data, as well as for the submission, publication, dissemination and use of such data;</p> <p>s) collect, and share in a timely manner, data concerning fisheries activities, in particular on vessel position, retained catch, discarded catch and fishing effort while maintaining confidentiality, where appropriate;</p> <p>t) evaluate the impact of fishing, other human activities and environmental factors on the fishery resources and on the marine environment;</p> <p>u) promote co-operation and co-ordination between Contracting Parties to ensure that conservation and management measures for straddling fish stocks in areas under national jurisdiction and measures for the same stocks of fishery resources are compatible;</p> <p>v) [as required,] develop, rules and procedures for the monitoring, control and surveillance of fishery activities in order to ensure compliance with conservation and management measures adopted</p>	<p>c) evaluate the impact of fishing taking into account the environmental and oceanographic characteristics of the Area, other human activities and environmental factors on the fishery resources and on the marine environment;</p> <p>d) formulate and adopt conservation and management measures necessary for ensuring the long term sustainability of the fishery resources and the protection of biodiversity in the marine environment, based on the best scientific evidence available;</p> <p>e) promote co-operation and co-ordination between Contracting Parties to ensure that conservation and management measures for straddling fish stocks in areas under national jurisdiction and measures for straddling fish stocks in the Area are compatible;</p>	<p>Insert modified subparagraph (g) before Chair's text subparagraph (c). Delete 'as required'.</p> <p>Delete 'as required'. Insert 'and the protection of biodiversity in the marine environment,' to reflect general principle Article 4(1)(f).</p> <p>f) Relocated to Contracting Parties Duties. See new subparagraph (k) in NZ text.</p> <p>g) Insert as modified subparagraph (c) in NZ text</p> <p>h) Replace 'the same stocks of fishery resources' with 'straddling fish stocks in the Area'.</p> <p>Delete subparagraph (i) and replace as new subparagraph (m)</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>on the basis of the present Agreement including, where appropriate, a system of verification incorporating vessel monitoring, observation and inspection;</p> <p>w) [as required,] develop measures to prevent, deter and eliminate illegal, unreported and unregulated, fishing (IUU fishing);</p> <p>x) in accordance with international law and any applicable instruments, draw the attention of any State that is not a Member [Contracting Party], to any activities that undermine the [attainment of the objectives of this Agreement] [effectiveness of conservation and management measures adopted under this Agreement];</p> <p>y) [as required,] establish the criteria for and rules governing participation in fishing;⁶³</p>	<p>(f) develop and monitor measures to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU fishing);</p> <p>(g) in accordance with international law and any applicable instruments, draw the attention of any State that is not a Contracting Party to any activities which undermine the objectives of this Agreement or the effectiveness of conservation and management measures adopted under this Agreement;</p> <p>k) formulate requirements for each Flag State to report on its fishing vessels and fishing areas operating in the Area, where such requirements shall include information on total catches of species;</p> <p>(m) establish procedures, such as an observer programme and an inspection scheme, for the monitoring, control and surveillance of fishing activities in the Area. Such procedures shall:</p> <ol style="list-style-type: none"> i. foster cooperation among Contracting Parties to ensure the effective implementation and compliance with conservation and management measures agreed by the Meeting of the Parties; ii. be impartial and non-discriminatory in nature; iii. take into account the principles contained in articles 21 and 22 of 	<p>Delete 'As required' Insert 'and monitor' after 'develop'</p> <p>Replace 'that undermine the [attainment of the objectives of this Agreement] [effectiveness...]' with 'which undermine the objectives of this Agreement or the effectiveness...'</p> <p>Insert new subparagraph (k)</p> <p>Insert new subparagraph.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>z) carry out any other tasks and functions necessary to achieve the objectives of this Agreement.</p>	<p>the 1995 Agreement when developing rules concerning the boarding and inspection of vessels operating in the Area.</p>	
<p style="text-align: center;">ARTICLE 7 – SUBSIDIARY BODIES⁶⁴</p> <p>1. The Meeting of the Parties shall establish a permanent Scientific Committee, which shall meet at least once a year, preferably prior to the Meeting of the Parties. The functions of the Scientific Committee shall be:</p> <p>g) to conduct the scientific assessment of the fishery resources stocks covered by this Agreement;</p> <p>h) to encourage and promote co-operation in scientific research in order to improve knowledge and review of the state of the fishery resources;</p> <p>i) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of the conservation and management measures referred to in Article 6.1.[b]) ;</p> <p>j) to provide advice and recommendations to the Meeting of the Parties for the formulation of measures regarding the monitoring of fishing activities;</p> <p>k) to provide advice and recommendations to the Meeting of the Parties on appropriate standards and format for fishery data collection and exchange;</p> <p>l) any other function that the Meeting of the Parties may decide.</p>	<p>1. The Meeting of the Parties shall establish a permanent Scientific Committee, which shall meet at the same frequency as the Meeting of the Parties and preferably prior to the Meeting of the Parties. The functions of the Scientific Committee shall be:</p> <p>a) to conduct the scientific assessment of the fishery resources covered by this Agreement;</p> <ul style="list-style-type: none"> • • c) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of the conservation and management measures referred to in Article [6.1]; <p>d) to provide scientific advice and recommendations to the Meeting of the Parties for the formulation of measures regarding the monitoring of fishing activities;</p> <p>e) to provide scientific advice and recommendations to the Meeting of the Parties on appropriate standards and format for fishery data collection and exchange; and</p>	<p>Replace 'shall meet at least once a year,' with 'shall meet at the same frequency as the Meeting of the Parties and ..'</p> <p>(a) delete the word 'stocks'</p> <p>c) Insert 'scientific' before 'advice'</p> <p>d) Insert 'scientific' before 'advice';</p> <p>e) Replace 'on appropriate standards and format for fishery data collection and exchange' with 'for the formulation of measures regarding the monitoring of fishing activities'</p>

64

Source – Draft SWIOC Agreement, Article 14, modified.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>2. The Meeting of the Parties may also establish such temporary, special or standing committees to study and report on matters pertaining to the implementation of the objectives of this Agreement, and working groups to study and recommend on specific technical problems.</p> <p>3. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee and to any other committee or working group that may be established. Such representative may be accompanied by advisers.</p> <p>4. The committees and working groups referred to this Article shall be convened by the Chair of the Meeting of the Parties.</p>	<p>2. Each Contracting Party shall be entitled to appoint one representative to the Scientific Committee and to any other committee or working group that may be established. Advisers may accompany such representative(s). The Chairperson of the Meeting of the Parties shall convene the committees and working groups referred to in this Article.</p> <p>3. In developing advice and recommendations the Science Committee will take into consideration the work of the [Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean] as well as that of other relevant regional fisheries management organizations.</p> <p style="text-align: center;">Secretariat</p> <p>4. The Meeting of Parties may also establish a Secretariat to perform the following functions, should the need arise:</p> <ul style="list-style-type: none"> (a) implementing and coordinating the administrative provisions of this Agreement, including the compilation and distribution of the official report of the Meeting of the Parties; (b) maintaining a complete record of the proceedings of the Meeting of the Parties and its subsidiary bodies, as well as a complete archive of any other official documents pertaining to the implementation of this Agreement; (c) any other function that the Meeting of the Parties may decide. <p style="text-align: center;">Other subsidiary bodies</p> <p>5. The Meeting of the Parties may also establish such temporary, special or standing committees to study and report on matters pertaining to the implementation of the objectives of this</p>	<p>Reposition paragraph 2 as new paragraph 4 in NZ text.</p> <p>Tense conversion.</p> <p>New paragraph.</p> <p>New paragraph to replace Chair's text Article 9.</p> <p>5. Chair's text paragraph 2.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	<p>Agreement, and working groups to study and recommend on specific technical problems.</p>	
<p style="text-align: center;">ARTICLE 8 – DECISION MAKING⁶⁵</p> <p>1. Unless otherwise provided in this Agreement,⁶⁶ decisions of the Meeting of the Parties and its subsidiary bodies on matters of substance shall be taken by consensus of the Contracting Parties present. Consensus means the absence of any formal objection made at the time the decision was taken. (AUS) The question of whether a matter is one of substance shall be treated as a matter of substance.</p> <p>2. If efforts to reach a decision by consensus have been exhausted, as identified by the Chairperson, decisions shall be taken by a majority of four-fifths of the Members [Contracting Parties] present and voting.⁶⁷</p> <p>3. Decisions on matters other than those referred to in paragraph 1 shall be taken by a simple majority of the Members [Contracting Parties] present and voting.</p> <p>4. Decisions adopted by the Commission are binding on all Contracting Parties.⁶⁸</p>	<p>1. Decisions of the Meeting of the Parties and its subsidiary bodies on matters of substance shall be taken by the consensus of the Contracting Parties present, where 'consensus' means the absence of any formal objection made at the time a decision is taken. The question of whether a matter is one of substance shall be treated as a matter of substance.</p> <p>2. If efforts to reach a decision by consensus have been exhausted, as identified by the Chairperson, decisions shall be taken by a majority of four-fifths of the Contracting Parties present and voting, unless otherwise provided in this Agreement.</p> <p>5. A Contracting Party that has not paid its contribution, as may be applicable, for [two consecutive contribution cycles] shall not enjoy the right to participate in the decision-making process in the Meeting of</p>	<p>1. delete 'Unless otherwise provided in this Agreement'; Incorporate understanding of 'consensus' into the first sentence.</p> <p>2. Insert 'unless otherwise provided in this Agreement' after 'voting'.</p> <p>Insert new paragraph 5..</p>

⁶⁵ Source – Draft SWIOC Agreement, Article 11, modified.

⁶⁶ It is proposed in Article 21 that amendments to the Agreement and annexes are adopted by Consensus of all Contracting Parties. That would be the only exception to the general 'consensus of the present' rule under this draft.

⁶⁷ As proposed by Australia in comments to Draft SWIOC Agreement. In case of majority voting, the EC would require an objection procedure, such as the provisions foreseen in the Draft SWIOC Agreement, Article 12, paragraphs 4 to 9).

⁶⁸ Proposal by Australia.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	Parties until it has fulfilled its obligations, unless the Meeting of Parties decides otherwise.	
<p style="text-align: center;">ARTICLE 9 – SECRETARIAT</p> <p><i>Alternative 1 – Contracting out the secretariat to FAO or IOTC. The Provider is not referred to by name with a view to facilitate a decision, if appropriate, to seek the services of a different provider at the end of any 5-year term. The details of payment procedures and consequences of non-payment of quotas by Parties could be established in the Secretariat Assistance Arrangement and in the Decision of the MOP which would approve the SSA and authorise the Chair to sign it. Specific arrangements should be agreed for the period since the adoption of the Agreement until the first Secretariat Assistance Arrangement may be officially decided by the Meeting of the Parties and concluded with the Provider. See also in this respect the comments concerning the implementation of Interim Arrangements at the end of this working document. The suggestion is for this to be done in a 'final act', or Resolution of the IGC, kind of instrument.</i></p> <ol style="list-style-type: none"> 1. The Contracting Parties shall seek the assistance of <i>an existing Multilateral or Regional Fisheries Organisation or Institution</i> in providing secretariat services for implementing and coordinating the provisions of this Agreement.⁶⁹ Such Organisation shall hereafter be referred to as 'the Provider'. 2. Secretariat Assistance shall be based on an Arrangement concluded between the Meeting of the Parties, acting through its Chairperson, and the Provider, as approved by the Meeting of the Parties. 3. The Secretariat Assistance Arrangement shall stipulate suitable financial compensation for the Provider's services on the basis of a detailed, binding costs estimate agreed by both sides. The agreement shall be concluded for a duration of (5) years and shall be renewable. 4. Subject to Article (-), paragraph 4, the Secretariat Assistance Arrangement shall be funded by the Contracting Parties as follows: <ol style="list-style-type: none"> c) (70/80)% of the costs shall be funded by Contracting Parties that carry out fishing activities in the Area. Each fishing Contracting-Party's contribution shall be in direct proportion to its share of the 	Removed from NZ text.	In keeping with the preference that the agreement be low cost and flexible it is suggested that the Meeting of Parties be given the capacity to determine the need for a secretariat at a later date. This text could be retained for consideration by the Meeting of Parties.

⁶⁹

Source – Article V.1 of the Nauru Agreement.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>total catches recorded in the Area in the previous year.</p> <p>d) (30/20)% shall be funded by non-Fishing Contracting Parties on the basis of equal shares.</p> <p><i>Alternative 2: Rotating Secretariat. This option would not require financial provisions in the text.</i></p> <ol style="list-style-type: none"> 1. The Secretariat of the Meetings of the Parties and its subsidiary bodies shall be provided by the Contracting Party hosting the Meetings for the relevant year. 2. Such Contracting Party shall be responsible for implementing and coordinating the provisions of this Agreement during the intersessional period spanning from the distribution of the official report of the previous Meeting of the Parties until the distribution of the official report of the Meeting of the Parties it has hosted. 3. Each Contracting Party shall keep a complete record of the proceedings of the Meeting of the parties and its subsidiary bodies, as well as a complete archive of any other official documents pertaining to the implementation of this Agreement. <p><i>Alternative 3: Secretariat ensured by one Party on a voluntary basis.</i></p> <ol style="list-style-type: none"> 1. (Name of Party) shall ensure the Secretariat of the Meeting of the Parties. For this purpose, it shall designate an officer as Executive Secretary of this Agreement. (Name of the Party) shall ensure that the Executive Secretary is assisted by qualified staff as required to carry out the tasks inherent to his/her responsibilities. 2. The Executive Secretary shall be responsible for implementing the policies and activities decided by the Meeting of the Parties, to which he/she shall report thereon. The Executive Secretary shall also act as Secretary to the subsidiary bodies established by the Meeting of the Parties, as required. 		
<p style="text-align: center;">[ARTICLE (-) - FINANCES⁷⁰</p> <ol style="list-style-type: none"> 1. The Meeting of the Parties <i>shall / may</i> adopt a budget [as required] for the funding of the operation of this Agreement and any policies and activities decided by the Parties hereunder. 	<p>Removed from NZ text.</p>	<p>In keeping with the preference that the agreement be low cost and flexible it is suggested that the Meeting of Parties be</p>

⁷⁰

Source – Draft SWIOC Agreement, Article 17, adapted. See comments on this language in Part II.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>2. Where the Meeting of the Parties should, in accordance with paragraph 1, decide the adoption of a budget, the following provisions shall apply:</p> <p>a) the budget exercise shall be annual;</p> <p>b) the amount of the contribution of each Contracting Party to the budget shall be determined in accordance with a scheme adopted by the Meeting of the Parties. In adopting such scheme, the Meeting of the Parties shall give due consideration to the economic status of Contracting Parties which are developing States, and ensure that adequate weight is allocated to Contracting Parties that benefit from fishing in the Area;</p> <p>d) the Meeting of the Parties shall adopt Financial regulations governing the administration of the budget and its related Funds, including</p> <p style="padding-left: 40px;">i. the procedures according to which each Contracting Party shall pay its contribution and</p> <p style="padding-left: 40px;">ii. the criteria and procedures according to which the Meeting of the Parties may accept voluntary contributions, donations or other form of assistance from organizations, individuals and other sources generally or in connection with specific projects or activities relevant to the implementation of this Agreement;</p> <p>e) [the budget shall foresee the expenditure required to fund the Secretariat Assistance Arrangement referred to in Article 9. Correspondingly, the provisions of Article 9 paragraph 4 shall cease to apply;]</p> <p>f) A Member that is in arrears in the payment of its contributions to the budget shall have no right to participate in decision making by the Meeting of the Parties and its subsidiary bodies if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding calendar year. [The Meeting of the Parties may,</p>		<p>given the capacity to determine the need for financial regulations at a later date. This text could be retained for later consideration by the Meeting of Parties.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>nevertheless, permit such a Contracting Party to vote if it is satisfied that the failure to pay was due to conditions beyond the control of the Contracting Party, but in no case shall it extend the right to vote beyond a further calendar year.]⁷¹]</p>		
<p>ARTICLE 10 – CONTRACTING PARTY DUTIES⁷²</p> <p>2. Each Contracting Party shall, in respect of its activities within the Area:</p> <p>d) promptly implement this Agreement and any conservation, management and other measures or matters which may be agreed by the [Meeting of Parties] Commission;</p> <p>e) take appropriate measures[,]in order to ensure the effectiveness of the measures adopted in accordance with this Agreement;</p> <p>f) collect and exchange scientific, technical and statistical data with respect to fisheries resources covered by this Agreement and ensure that;</p> <p>(i) data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the rules adopted by the Meeting of the Parties in accordance with Article 7.1.d);</p> <p>(ii) appropriate measures are taken to verify the accuracy of such data;</p> <p>(iii) such statistical, biological and other data and information as the Meeting of the Parties may decide is provided annually; and</p> <p>iv) information on steps taken to implement the conservation and management measures adopted by the Meeting of the Parties is timely provided.</p>		<p>c)(i) Delete 'in accordance with Article 7.1.d'</p>

⁷² Source – Article 21 of the Draft SWIOC Agreement. Only items relating to essential elements identified by the Chair and NZ have been retained.

⁷³ Bracketed section as appearing in the Draft SWIOC Agreement.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>2. Each Contracting Party shall make available to the Meeting of the Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this article and, in the case of Coastal States which are Contracting Parties to this Agreement, as regards the measures they have adopted for fishery resources within waters under their jurisdiction adjacent to the Area.</p> <p>3. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall, to the greatest extent possible, take measures, or cooperate, to ensure that its nationals fishing, including fishing vessels owned or controlled by it nationals, in the Area comply with the provisions of this Agreement. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of this Agreement or any conservation and management measure adopted pursuant hereto. A report on the progress of the investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] shall be provided to the Contracting Party making the request and to The Meeting of the Parties as soon as practicable [and in any case within two months of such request] and a report on the outcome of the investigation shall be provided when the investigation is completed. For the purpose of this Article, a national includes a natural or a legal person.⁷³</p>	<p>3. Each Contracting Party shall make available to the Meeting of the Parties a statement of implementing and compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this article and, in the case of a Coastal State Contracting Party, as regards the conservation and management measures for straddling fish stocks in areas under its national jurisdiction.</p> <p>3. Without prejudice to the primacy of the responsibility of the Flag State, each Contracting Party shall [to the greatest extent possible,] take measures or cooperate to ensure that its nationals fishing, including fishing vessels owned or operated by its nationals, in the Area comply with the provisions of this Agreement.</p> <p>4. Each Contracting Party shall[, to the greatest extent possible,] at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or operated by its nationals, of the provisions of this Agreement or any conservation and management measure adopted pursuant hereto. A report on the progress of the investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] shall be provided to the Contracting Party making the request and to the Meeting of the Parties as soon as practicable [and in any case within two months of such request]. A report on the outcome of the investigation shall be provided to the Meeting of the Parties when the investigation is completed. For the purpose of this Article, a 'national' includes a natural or a legal person.</p>	<p>2. Replace 'in the case of Coastal States which are Contracting Parties to this Agreement, as regards the measures they have adopted for fishery resources within waters under their jurisdiction adjacent to the Area' with 'in the case of a Coastal State Contracting Party, as regards the conservation and management measures for straddling fish stocks in areas under its national jurisdiction'.</p> <p>3. Break Chair's text paragraph 3 into two paragraphs; Split penultimate sentence into two sentences.</p> <p>Replace 'controlled' with 'operated' (twice)</p> <p>Insert ' to the Meeting of the Parties' following the word 'provided'.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p style="text-align: center;">Article 11 – FLAG STATE DUTIES⁷⁴</p> <p>1. Each Contracting Party shall take such measures as may be necessary to ensure that:</p> <p>c) fishing vessels flying its flag which operate in the Area comply with the provisions of this Agreement and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine[s] the effectiveness of such measures; and</p> <p>d) fishing vessels flying its flag do not conduct unauthorized fishing within waters under the national jurisdiction of any Contracting Party.</p> <p>2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that Contracting Party. A Contracting Party shall authorize the use of vessels flying its flag for fishing beyond waters of national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law Each Contracting Party shall take appropriate measures in respect of vessels flying its flag which are in accordance with measures adopted pursuant to this Agreement and which give effect thereto, and which take account of existing international practices.</p> <p>3. Each Contracting Party shall maintain a record of fishing vessels entitled to fly its flag and authorized to fish in the Area for fishery resources to which this Agreement applies, and shall ensure that the information for all such vessels specified in Annex I is entered in that record. Contracting Parties shall notify this information to the Secretariat, in accordance with such procedures as may be agreed by</p>	<p>1. Each Contracting Party shall take such measures as may be necessary to ensure that:</p> <p>a) fishing vessels flying its flag operating in the Area comply with the provisions of this Agreement and the conservation and management measures adopted [by the Meetings of the Parties] and that such vessels do not engage in any activity which undermines the effectiveness of such measures;</p> <p>b) fishing vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of any Contracting Party; and</p> <p>c) fishing vessels flying its flag operating in the Area operate [and carry near real-time position-fixing transmitters].</p> <p>2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorized to do so by the appropriate authority or authorities of that Contracting Party.</p> <p>3. Each Contracting Party shall:</p> <p>a) authorize the use of vessels flying its flag for fishing beyond areas under national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law;</p> <p>b) maintain a record of fishing vessels entitled to fly its flag and authorized to fish in the Area for fishery resources to which this Agreement applies, and shall ensure that the information for all such vessels specified in Annex I is entered in that record. Contracting Parties shall exchange this information, in accordance with such procedures as may be agreed by the</p>	<p>Replace 'pursuant hereto' with 'the Meeting of the Parties'</p> <p>Replace 'waters' with 'areas'</p> <p>Insert new subparagraph c);</p> <p>Split Chair's text paragraph 2 into two paragraphs; Reformat Contracting Party requirements a single paragraph with several subparagraphs.</p> <p>Replace 'The Secretariat shall promptly circulate this</p>

⁷⁴

Source – Draft SWIOC Agreement, Article 22, modified. Some comments by Australia incorporated.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>the Meeting of the Parties. The Secretariat shall promptly circulate this information to the other Contracting Parties and shall keep an updated registry of notified vessels⁷⁵.</p> <p>4. Each Contracting Party shall, to the greatest extent possible, at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by fishing vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted pursuant thereto. A report on the progress of the investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] shall be provided to the Contracting Party making the request and to The Meeting of the Parties as soon as practicable [and in any case within two months of such request] and a report on the outcome of the investigation shall be provided when the investigation is completed.⁷⁶</p> <p>5. Each Contracting Party whose fishing vessels operate in the Area shall make available to each annual Meeting of the Parties a report on its fishing activities in the Area during the previous season / year, in conformity with the requirements determined by the Meeting of the Parties. Such requirements shall include reporting on fishing vessels and fishing areas, as well as on total catches by species made by its fleet.⁷⁷</p>	<p>Meeting of the Parties;</p> <p>c) make available to each Meeting of the Parties a report on its fishing activities in the Area in conformity with the requirements determined by the Meeting of the Parties.</p> <p>d) collect, and share in a timely manner, complete and accurate data concerning fisheries activities by vessels flying its flag, in particular on vessel position, retained catch, discarded catch and fishing effort [while maintaining confidentiality, where appropriate];</p> <p>e) investigate any alleged violation by fishing vessels flying its flag of the provisions of this Agreement, or any conservation and management measure adopted pursuant thereto, at the request of any other Contracting Party and when provided with the relevant information. To this end a Contracting Party shall:</p> <p>i. provide a report on the progress of an investigation, [including details of any action taken or proposed to be taken in relation to the alleged violation,] to the Contracting Party making the request and to the Meeting of the Parties as soon as practicable [and in any case within two months of such request] and provide a report on the outcome of the</p>	<p>information to the other Contracting Parties and shall keep an updated registry of notified vessels' with 'Contracting Parties shall exchange this information, in accordance with such procedures as may be agreed by the Meeting of the Parties'</p> <p>NZ subparagraph (c) was formerly Chair's text paragraph 5. NZ bullet point referred to in footnote 29 is incorporated under the Article 6(k) of NZ text.</p> <p>NZ text subparagraph (d) was formerly Chair's text Article 6(f).</p> <p>Chair's text paragraph 4 becomes NZ text subparagraph (e)</p> <p>Chair's text para 5 becomes NZ text subparagraph (c).</p>

⁷⁵ NZ Proposed bullet point. In the event a rotating secretariat is agreed, the registry should be transferred from incumbent to incumbent Contracting Party – e.g. electronic support.

⁷⁶ Same provision, modified, as that included for 'nationals' in the preceding Article.

⁷⁷ NZ Bullet point.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	<p>investigation when the investigation is completed.</p> <p>ii. carry out all investigations and judicial proceedings expeditiously and apply sanctions applicable in respect of violations which are adequate in severity to be effective in securing compliance and to discourage violations wherever they occur which shall deprive offenders of the benefits accruing from their illegal activities.</p> <p>iii. apply measures in respect of masters and other officers of fishing vessels, including provisions that may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.</p>	
<p>ARTICLE 12 – PORT STATE DUTIES</p> <p>1. Measures taken by a Port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a [P]ort State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures, a port State shall not discriminate in form or in fact against the fishing vessels of any State.</p> <p>2. Each Contracting Party shall, in accordance with measures agreed by the Meeting of the Parties, <i>inter alia</i>, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.</p> <p>3. Contracting Parties shall not permit landings, transshipment, or supply services in relation to vessels unless they can be satisfied that fish on board the vessel have been caught in a manner consistent with the measures adopted by pursuant to this Agreement.</p> <p>4. Contracting Parties shall provide assistance to Flag State Contracting Parties, as reasonably practical and in accordance with the national laws of the Port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal under their jurisdiction and the Flag State of the vessel requests them to provide assistance in ensuring compliance with the provisions of this Agreement.</p> <p>5. In the event that a Contracting Party considers that a vessel of another Contracting Party making use of its ports or offshore facilities has violated a</p>	<p>2. Each Port State Contracting Party shall:</p> <p>a) in accordance with measures agreed by the Meeting of the Parties, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals;</p> <p>b) not permit landings or transshipment in relation to a vessel unless it is satisfied that fish on board the vessel have been caught in a manner consistent with the measures adopted pursuant to this Agreement; and</p> <p>c) provide assistance to Flag State Contracting Parties, as reasonably practical and in accordance with its law and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal under its jurisdiction and the Flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Agreement.</p>	<p>Convert paragraphs 2-4 to a single paragraph with 3 subparagraphs.</p> <p>Chair's text paragraph 2: Remove the words 'or supply services'; Replace 'they can be satisfied' with 'it is satisfied'</p> <p>Editorial amendments to Chair's text paragraph 4</p> <p>5: Remove the words 'or control' from Chair's text paragraph 5. Relocate the final sentence 'In</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>conservation and management or control measure adopted pursuant to this Agreement, it shall draw this to the attention of the flag State concerned and of the Meeting of the Parties. The Contracting Party shall provide the flag State and the Meeting of the Parties with full documentation of the matter, including any record of inspection. In such cases, the flag State shall transmit to the Meeting of the Parties details of actions it has taken in respect of the matter.</p> <p>6. Nothing in this article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.</p>		<p>such cases, the flag State shall transmit to the Meeting of the Parties details of actions it has taken in respect of the matter' to Flag State Duties.</p>
<p>ARTICLE 13 – SPECIAL REQUIREMENTS OF DEVELOPING STATES⁷⁸</p> <p>1. The Contracting Parties shall give full recognition to the special requirements of developing States [in the region] in relation to the conservation and management of fishery resources and the sustainable development of such resources.</p> <p>2. The Contracting parties recognize, in particular:</p> <p>d) the vulnerability of developing States [in the region] which are dependent on the exploitation of fishery resources, including for meeting the nutritional requirements of their populations or parts thereof;</p> <p>e) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers; and</p> <p>f) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States [in the region]</p> <p>3. Cooperation by the Contracting Parties under the provisions of this Agreement and through other subregional or regional organizations involved in the management of fisheries resources may include action for the purposes of:</p> <p>c) enhancing the ability of developing States [in the region] to</p>		<p>This Article may need to be reconsidered in light of the decision at Nairobi to look at the interests of Coastal States in a separate instrument.</p>

⁷⁸

Source – Draft SWIOC Agreement, Article 20, modified. All comments by Australia incorporated.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>conserve and manage fishery resources and to develop their own fisheries for such resources; and</p> <p>d) assisting developing States [in the region] to enable them to participate in fisheries for such resources, including facilitating access in accordance with this Agreement.</p> <p>4. Cooperation with developing States [in the region] for the purposes set out in this article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, and activities directed specifically towards:</p> <p>e) improved conservation and management of the fishery resources, which can include the collection, reporting, verification, exchange and analysis of fisheries data and related information;</p> <p>f) improved information collection and management of the impact of fishing activities on the marine environment;</p> <p>g) stock assessment and scientific research; and</p> <p>h) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology.</p>		
<p style="text-align: center;">ARTICLE 14 – TRANSPARENCY⁷⁹</p> <p>1. The Contracting Parties shall promote transparency in decision-making processes and other activities carried out under this Agreement.</p> <p>2. Coastal States with waters or seabed under national jurisdiction that are adjacent to or surrounded by the Area which are not Contracting Parties to this Agreement shall be entitled to participate as observers in the Meetings of the</p>	<p>2. Coastal States with areas under national jurisdiction adjacent to or surrounded by the Area, which are not Contracting Parties to this Agreement, shall be entitled to participate as observers in the Meetings of the Parties and meetings of its subsidiary bodies.</p>	<p>2. Replace ‘ waters or seabed’ with ‘areas’; Delete ‘that are’ prior to ‘adjacent’.</p>

⁷⁹ Source – Draft SWIOC Agreement, Article 16, modified.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>Parties and of subsidiary bodies.</p> <p>3. Intergovernmental organisations concerned with matters relevant to the implementation of this Agreement, in particular the Food and Agriculture Organisation of the United Nations, the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean, and Regional Fisheries Organisations with competence over areas of the high seas bordering the Area, shall be entitled to participate as observers in the Meetings of the Parties and of subsidiary bodies</p> <p>4. Representatives from non-governmental organizations concerned with matters relevant to the implementation of this Agreement shall be afforded the opportunity to participate in the Meetings of the Parties and of subsidiary bodies as observers or otherwise as determined by the Contracting Parties. The rules of procedure of the Meeting of the Parties and its subsidiary bodies shall provide for such participation. The procedures shall not be unduly restrictive in this respect.</p> <p>5. Observers shall be given timely access to pertinent information subject to the rules and procedures, including those concerning confidentiality requirements, which the Meeting of the Parties may adopt.</p>	<p>3. Non-parties to this Agreement shall be entitled to participate as observers in the Meetings of the Parties and of meetings of its subsidiary bodies.</p>	<p>Insert new paragraph regarding non-parties.</p> <p>Chair's text paragraph 4: Insert 'its' prior to 'subsidiary bodies'; Replace 'Contracting Parties' with 'Meeting of the Parties'.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p style="text-align: center;">ARTICLE 15 – FISHING ENTITIES</p> <p><i>Alternative 1 – Source: Australian proposal to draft SWIOC Agreement, adapted.⁸⁰</i></p> <p>1. Any fishing entity whose vessels (fish or intend to fish) (have fished in the Area for fishery resources to which this Agreement applies at any time during the four years preceding the adoption of this Agreement)⁸¹ may express its firm commitment to abide by the terms of this Agreement and comply with any conservation and management measures adopted pursuant thereto, by:</p> <p>c) signing, during the period referred to in Article 22, paragraph 1 of this Agreement, an instrument in the terms set out at Annex III; and/or</p> <p>d) during or after the above-mentioned period, providing a written communication to the Depositary in the terms set out at Annex IV. The Depositary shall promptly provide a copy of this communication to all signatories and Parties.</p> <p>2. The commitment expressed pursuant to paragraph 1 shall be effective from the date referred to in Article 25, or on the date of the written communication referred to in paragraph 1, whichever is later.</p> <p>3. Any fishing entity referred to above may express its firm commitment to abide by the terms as it may be amended pursuant to Article 20 by providing a written communication to the Depositary in the terms set out at Annex V.</p> <p>4. The commitment expressed pursuant to paragraph 3 of this Article shall be effective from the date referred to in Article 20, paragraph 3, or on the date of the communication referred to in paragraph 3 of this Article, whichever is later.</p>		<p>New Zealand prefers Alternative 2, (with amendments).</p>

⁸⁰ If this option is retained, three annexes should be added to the Agreement text (III to V). I have not supplied proposals for the commitment instruments – see next note, but a useful model may be found in the texts annexed to the IATTC Resolution on the Adoption of the Antigua Convention.

⁸¹ The first text in brackets corresponds to the Australian proposal, the second is the Chair's alternative proposal. My proposal tends to ensure that if required, all sides interested in the fisheries can co-operate under the Agreement, even if this interest develops in the future.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p><i>Alternative 2 – Source, paragraph 1 of Annex I, MHLC Convention, adapted.⁸²</i></p> <p>1. After the entry into force of this Agreement, any fishing entity whose vessels fish or intend to fish for fishery resources in the Area, may, by a written instrument delivered to the Depositary, express its firm commitment to be bound by the terms of this Agreement. Such commitment shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the Depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.</p> <p>5/2. A fishing entity which has committed to be bound by the terms of this Agreement, may participate in the Meeting of the Parties and its subsidiary bodies, and partake in decision-making. [Where applicable, the fishing entity concerned shall contribute to the budget in accordance with Article (-).]</p>	<ul style="list-style-type: none"> • • • • • <p>1. After the entry into force of this Agreement, any fishing entity whose vessels have fished or intend to fish for fishery resources in the Area, may, by a written instrument delivered to the Depositary, express its firm commitment to be bound by the terms of this Agreement.</p> <p>2. Such fishing entity may participate in the Meeting of the Parties and its subsidiary bodies, and partake in decision-making deemed applicable by the Meeting of the Parties. References thereto by the Meeting of the Parties include, for the purposes of this Agreement, such fishing entity as well as Contracting Parties.⁸⁵</p> <p>3. Such commitment shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the Depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.</p>	<p>Split Chair's text paragraph 1 into two paragraphs (1 & 3 in New Zealand text)</p> <p>1. Replace 'fish or intend to fish' with 'have fished or intend to fish'.</p> <p>Insert new paragraph 2.</p> <p>Second part of Chair's text paragraph 1 becomes paragraph 3 in New Zealand text. This provision could be made consistent with Article 26 (Withdrawal) in Chair's text.</p> <p>Delete Chair's text paragraph 5/2. Covered by new paragraph 2.</p>

⁸² The Chair is of the view that at this stage, this alternative is simpler and more appropriate. SIOFA signatories or Contracting Parties would have the opportunity to agree on precise commitment procedures upon a fishing Entity's manifestation of interest, either during the interim period or after entry into force of the Agreement, through a decision of the Meeting of the Parties.

⁸³ If the contracting out option is retained in relation to the Secretariat, fishing entities should also be required to contribute funds.

⁸⁴ Source, paragraph 3 of Annex I of the MHLC Convention. The assumption is that a dispute on the interpretation of the Agreement can only involve a fishing entity that has committed, so no more lengthy references in this sense are included. Those references are necessary in the two previous paragraphs.

⁸⁵ This includes decisions concerning the budget.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>6/3. Articles 4, (9)⁸³, 10, 11, 12, 13, 14, 16 and 17 apply, mutatis mutandis, to fishing entities that have committed to be bound by the terms of this Agreement in accordance with the procedures established in this Article.</p> <p>7/4. If a dispute concerning the interpretation or application of this Agreement involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.⁸⁴</p>	<p>5. The provisions of this Agreement relating to participation by fishing entities are solely for the purposes of this Agreement.</p>	<p>Delete Chair's text paragraph 6/3. Covered by new paragraph 2.</p> <p>Insert new paragraph 5.</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	<p style="text-align: center;">[Article 15 Non-members of organizations and non-participants in arrangements</p> <p>1. Contracting Parties shall take measures consistent with this Agreement, the 1995 Agreement and international law to deter the activities of vessels flying the flags of non-parties to this Agreement which undermine the effectiveness of conservation and management measures adopted by the Meeting of the Parties.</p> <p>2. Contracting Parties shall exchange information on the activities of fishing vessels flying the flags of non-parties to this Agreement which are engaged in fishing operations in the Area.</p> <p>3. Contracting Parties shall draw the attention of any State not a Party to this Agreement to any activity undertaken by its nationals or vessels flying its flag which, in the opinion of the Contracting Party [or the Meeting of the Parties], affects the implementation of the objectives of this Agreement.</p> <p>4. Contracting Parties shall, individually or jointly, request non-parties to this Agreement whose vessels fish in the Area to cooperate fully in the implementation of conservation and management measures adopted by the Meeting of the Parties with a view to ensuring that such measures are applied to all fishing activities in the Area. Such cooperating non-parties to this Agreement shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of the relevant stocks.]</p>	<p>Suggested text in the event that an article on non-parties is required.</p>
<p style="text-align: center;">ARTICLE 16 – COOPERATION WITH OTHER ORGANISATIONS⁸⁶</p> <p>The Contracting Parties, acting jointly under this Agreement, shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular with the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean and any other Regional</p>	<p>The Contracting Parties, acting jointly under this Agreement, shall cooperate closely with other international fisheries and related organizations in matters of mutual interest, in particular with the Commission for the Management and Development of the Coastal Fisheries of the South West Indian Ocean and any other Regional Fisheries Organization with competence over high seas waters bordering the Area.</p>	

⁸⁶

Source – Draft SWIOC Agreement, Article 15, slightly modified

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>Fisheries Organisation with competence over high seas waters bordering the Area. The Contracting Parties may invite the organizations referred to as well as [øf] other intergovernmental or non-governmental organizations to attend the Meeting of the Parties or meetings of the subsidiary bodies.</p>		<p>Delete final sentence as the point is addressed in Article 14 (Transparency).</p>
<p>ARTICLE 17 – GOOD FAITH AND ABUSE OF RIGHTS⁸⁷ Each Contracting Party shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of rights.</p>		
<p>ARTICLE 18 – RELATION TO OTHER AGREEMENTS <i>Alternative 1 - Source – Draft SWIOC Agreement, Article 28</i> This Agreement shall not alter the rights and obligations of Contracting Parties which arise from the 1982 Convention and other agreements compatible with the 1982 Convention and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Agreement.</p> <p><i>Alternative 2 – Australian proposal</i> Nothing in this Agreement shall prejudice the rights and obligations of States under the 1982 Convention or the 1995 Agreement.</p>		<p>New Zealand prefers Alternative 2.</p>
<p>ARTICLE 19 – INTERPRETATION AND SETTLEMENT OF DISPUTES <i>Alternative 1- Source: Draft SWIOC Agreement, Article 33</i> 1. If any dispute arises between two or more Contracting Parties concerning the interpretation or implementation of this Agreement, those Contracting Parties shall consult among themselves with a view to resolving the dispute, or to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. 2. In cases where a dispute between two or more Contracting Parties is agreed by the parties to the dispute to be of a technical nature, and the Contracting Parties are unable to resolve the dispute among</p>		<p>New Zealand prefers Alternative 2.</p>

⁸⁷

Source – Draft SWIOC Agreement, Article 27.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>themselves, they may refer the dispute to an ad hoc expert panel established in accordance with procedures adopted by the Meeting of the Parties. The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.</p> <p>3. Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in this Article, such dispute shall, at the request of any party to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to these instruments.</p> <p>4. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Agreement, of the 1982 Convention, of the 1995 Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law, compatible with the 1982 Convention and the 1995 Agreement, with a view to ensuring the conservation of the fish stocks concerned.</p> <p><i>Alternative 2 – Australian proposal (reference to ‘Members’ changed to ‘Contracting Parties’)</i></p> <p>Contracting Parties shall attempt to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more Straddling Stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to these instruments.</p>	<p>Contracting Parties shall use their best endeavours to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more Straddling Stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to these instruments.</p>	<p>Replace ‘attempt’ with ‘use their best endeavours’</p>

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p style="text-align: center;">ARTICLE 20 – AMENDMENTS⁸⁸</p> <p>1. Any Contracting Party may propose an amendment to the Agreement by providing to the Depository⁸⁹ the text of a proposed amendment at least sixty (60) days in advance of a Meeting of the Parties. The Depository shall provide a copy of this text to all other Contracting Parties promptly.</p> <p>2. Amendments to the Agreement shall be adopted by consensus of all Contracting Parties.</p> <p>3. Amendments to the Agreement shall enter into force ninety (90) days after all Contracting Parties which held this status at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depository.</p>	<p>2. Amendments to the Agreement may be adopted only by consensus of all Contracting Parties. [The procedure provided in Article 8(5) of this Agreement shall not apply to decisions under this paragraph⁹⁰].</p> <p>4. For each Contracting Party acceding to amendments to the Agreement after their entry into force, the amendments shall enter into force for that Party (30) days after the deposit of its instrument of accession to such amendments.</p>	<p>Replace 'shall' with 'may' and insert 'only' before 'by consensus'. The second sentence in this paragraph will be required if the suggested changes are made to Article 8 (Decision-Making). A similar sentence may be required elsewhere in this Agreement.</p> <p>Add new paragraph 4</p>
<p style="text-align: center;">ARTICLE 21 - ANNEXES⁹¹</p> <p>1. The Annexes to this Agreement form an integral part thereof and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annexes thereto.</p>		

⁸⁸ Source – Article XXXIV of the Antigua (IATTC) Convention.

⁸⁹ This role for the Depository has a precedent in the CCAMLR Convention.

⁹⁰ similar statement may be required elsewhere

⁹¹ Source – Article XXXV of the Antigua (IATTC) Convention

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>2. Any Contracting Party may propose an amendment to an Annex to the Agreement by providing to the Depositary the text of a proposed amendment at least sixty (60) days in advance of a Meeting of the Parties. The Depositary shall provide a copy of this text to all other Contracting Parties promptly.</p> <p>3. Unless otherwise agreed, amendments to an Annex shall enter into force for all Contracting Parties ninety (90) days after their adoption by the Meeting of the Parties.</p>		
<p>ARTICLE 22 – SIGNATURE RATIFICATION, ACCEPTANCE AND APPROVAL⁹²</p> <p>1. This Agreement shall be open for signature by</p> <p>c) <i>(the Participants in the Inter-Governmental Consultation on the Southern Indian Ocean Fisheries Agreement. – LIST)</i> and</p> <p>d) by any other State having jurisdiction over waters bordering or enclosed by the Area,</p> <p>and shall remain open for signature for twelve months from the (date of opening for signature).</p> <p>2. This Agreement is subject to ratification, acceptance or approval by the signatories.</p> <p>3. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.</p>		<p>3. Delete 'The' for consistency with following Article.</p> <p>4. Insert new paragraph 4.</p>

⁹² Source – Article 34 WCPFC Convention.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
	4. For each State which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force for that State on the thirtieth day following the deposit of its instrument of ratification, acceptance or approval.	
<p style="text-align: center;">ARTICLE 23 – ACCESSION⁹³</p> <p>1. This Agreement shall be open for accession by any State or Regional Economic Integration Organisation interested in research or fishing activities in relation to the fishery resources to which this Agreement applies.</p> <p>2. Instruments of accession shall be deposited with the Depositary.</p>	<p>1. This Agreement shall be open for accession by any State or regional economic integration organization interested in fishing activities in the Area in relation to the fishery resources to which this Agreement applies.</p> <p>3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force for that State or regional economic integration organization on the thirtieth day following the deposit of its instrument of accession.</p>	<p>1. Insert 'in the Area' and minor editorial changes.</p> <p>3. New paragraph 3.</p>
<p style="text-align: center;">ARTICLE 24 – THE DEPOSITARY⁹⁴</p> <p>1. The Director-General of the Food and Agriculture Organisation of the United Nations shall be the Depositary of this Agreement and any amendments or revisions to the Agreement. The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to Article 102 of the Charter of the United Nations.</p> <p>2. The Depositary shall inform all signatories of this Agreement and Fishing Entities referred to in Article 15 of signatures, ratifications and instruments deposited under Articles 22 and 23 and of the date of entry into force of the Agreement under Article 25.</p>		<p>Replace 'or revisions to the Agreement' with 'thereto'.</p>
<p style="text-align: center;">ARTICLE 25 – ENTRY INTO FORCE⁹⁵</p>		

⁹³ Source, CCAMLR Convention, Article XXIX.

⁹⁴ Source – Australian proposal to Draft SWIOC Agreement.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
This Agreement shall enter into force as from the date of receipt by the Depositary of the (x) instrument of ratification.	This Agreement shall enter into force 90 days from the date the Depositary receives the [fourth] instrument of ratification.	Insert interim period of 90 days and suggested number of ratifications required for entry into force.
<p align="center">ARTICLE 26 – WITHDRAWAL⁹⁶</p> <p>Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary who shall immediately inform all the Contracting Parties of such withdrawal. Notice of withdrawal shall become effective three months from the date of its receipt by the Depositary.</p>		
<p align="center">ARTICLE 27 – TERMINATION⁹⁷</p> <p>This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below three.</p>		
<p>IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.</p> <p>DONE at (place) on this --th day of (month), (year), in English and French, both texts being equally authentic.</p>		
<p align="center">ANNEX I - INFORMATION REQUIREMENTS⁹⁸</p> <p>1. The following information shall be provided to the Meeting of the Parties in respect of each fishing vessel referred to in Article 11, paragraph 3:</p> <p>s) Name of fishing vessel, registration number, previous names</p>		

⁹⁵ Draft SWIOC Agreement, Article 31.

⁹⁶ Draft SWIOC Agreement, Article 32.

⁹⁷ Draft SWIOC Agreement, Article 34.

⁹⁸ Source – Annex IV MHLC Convention

⁹⁹ Source – Annex 1 of the Antigua (IATTC) Convention.

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>(if known), and port of registry;</p> <p>t) Name and address of owner or owners;</p> <p>u) Name and nationality of master;</p> <p>v) Previous flag (if any);</p> <p>w) International Radio Call Sign;</p> <p>x) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);</p> <p>y) Colour photograph of vessel;</p> <p>z) Where and when built;</p> <p>aa) Type of vessel;</p> <p>bb) Normal crew complement;</p> <p>cc) Type of fishing method or methods;</p> <p>dd) Length;</p> <p>ee) Moulded depth;</p> <p>ff) Beam;</p> <p>gg) Gross register tonnage;</p> <p>hh) Power of main engine or engines;</p> <p>ii) The nature of the authorization to fish granted by the flag State;</p> <p>jj) Carrying capacity, including freezer type, capacity and number and fish hold capacity.</p>		
<p>2. The following information shall also be promptly notified to the</p>		

Chair's Text (with secretariat's editorial and grammatical comments)	New Zealand Proposal	Comment
<p>Secretariat⁹⁹:</p> <p>c) any additions to the record;</p> <p>d) deletions from the record by reason of:</p> <p>vi. the voluntary relinquishment or non-renewal of the fishing authorization by the owner of the vessel;</p> <p>vii. the withdrawal of the fishing authorization issued to the vessel in accordance with Article 11, paragraph 2;</p> <p>viii. the fact that the vessel is no longer entitled to fly its flag;</p> <p>ix. the scrapping, decommissioning or loss of the vessel; and</p> <p>x. any other reason, specifying which of the reasons listed above are applicable.</p>		