

**First International Meeting on the Establishment of the
South Pacific Regional Fisheries Management Organisation**

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Paper submitted by: the Co-Sponsors (Australia, Chile, New Zealand)

INTERIM ARRANGEMENTS

Purpose

1 This paper provides background information and potential avenues for the development of interim arrangements to ensure that the objectives of the International Consultations on the establishment of a South Pacific Regional Fisheries Management Organisation (RFMO) are not compromised prior to the entry into force of the agreement.

Introduction

2 There currently exists a lack of governance regimes in the high seas areas of the South Pacific Ocean for non-highly migratory, including straddling and discrete, fish stocks. The International Consultations on the establishment of a RFMO in the South Pacific will provide the governance structure required to conserve and manage fisheries resources and related marine ecosystems in the region. However, it is envisaged that this process could take 3 to 4 years to complete. In respect of this time-frame, and to help ensure that the process is not undermined by unregulated and unreported fishing activity in the region, interim arrangements are required.

3 There is limited knowledge of the distribution of fish stocks and extent of commercial fishing on the high seas in the southern Pacific Ocean. There are some straddling stocks that are currently managed by one or more countries in partnership and information on these stocks is more complete.

4 Experience in managing fisheries during the process to establish a RFMO can be obtained from similar processes, including the Western and Central Pacific Fisheries Commission (WCPFC), the South East Atlantic Fisheries Organisations (SEAFO) and the Southern Indian Ocean Fisheries Agreement (SIOFA). The Multilateral High Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (part of the consultations for the WCPFC) issued the 'Majuro Declaration' committing the Parties to the negotiations, catch and effort data collection and reporting, monitoring control and surveillance measures and to financial support to the interim work. The SEAFO Consultations adopted an Interim Agreement describing flag state responsibilities with regard to fishing authorisations, vessel and catch reporting and the collection of scientific data to support stock assessments. The SIOFA Intergovernmental

Consultation Process has adopted a resolution on data collection for high seas fisheries. The interim arrangements from the WCPFC, SEAFO and SIOFA processes are attached.

5 The importance of establishing some form of interim arrangements beyond data collection is exemplified by the decline in the orange roughy fishery in the Indian Ocean during the SIOFA Consultations. The SIOFA consultations began in 1999 - 2000, initially focussing on both the high seas and the EEZs of adjacent coastal states. An agreement to regulate non-highly migratory species in the high seas has now been concluded and is due to be adopted in 2006; a separate coastal state arrangement has also been adopted. This fishery began in 1999, peaked in 2000 when 40 or more vessels fished, then rapidly declined. The total catch of orange roughy is uncertain as some vessels did not report catches, but the recorded landings for 1999, 2000 and 2001 were 5211, 12218 and 1569 tonnes, respectively. Catches have since remained low.

6 Interim arrangements should take into account cooperation with other RFMOs adjacent or overlapping the proposed area, in particular the WCPFC, the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Inter-American Tropical Tuna Commission.

7 The Majuro Declaration in particular committed Parties to work in the interim to manage the fisheries resources for their long-term sustainability and to re-address issues throughout the consultation process. A Scientific Working Group was established to guide the direction of the science and to provide specific scientific advice. This advice was utilised by the Parties to implement interim management measures deemed necessary to ensure the long-term sustainability of the fisheries resources during the period of the Consultations in accordance with the commitment given in the Majuro Declaration.

8 The United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and The United Nations 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 (UNFSA) provide States with relevant principles to guide the establishment arrangements for the management and conservation of the living marine resources of the high seas. For example, with regard to exploratory fisheries, Article 6(6) of UNFSA further encourages States, to adopt, as soon as possible, cautious conservation and management measures.

9 In addition to the long standing general commitment from States to cooperate to protect the marine environment under UNCLOS, other fora, including, the United Nations General Assembly (UNGA), the World Conservation Union, the Convention on Biological Diversity and the FAO Committee on Fisheries, have recently made strong calls to specifically protect fisheries resources and vulnerable marine ecosystems, and address the adverse impacts of fishing practices on vulnerable ecosystems. In particular, UNGA Resolution 59/25 of 2004 on Fisheries addresses matters relating to RFMO competency, including interim measures.

10 The establishment of interim conservation and management measures should be based on the best scientific information available and include mechanisms for ensuring the compatibility of the interim measures with the permanent Commission upon its implementation. In applying the precautionary approach, a lack of full scientific certainty should not be used as a reason for postponing or avoiding measures to manage and conserve fish stocks and the marine environment responsibly, in order to avoid significant reduction or loss of biological diversity.

Implementation Instrument

11 In developing interim measures it is important to be cognisant of the potential difficulty and time taken to reach agreement amongst the relevant Parties. The time taken to develop interim measures should not unduly impact on the time devoted to developing the South Pacific RFMO Agreement.

12 It is envisaged that a voluntary declaration or statement of the Parties emanating from the consultation process could be the most appropriate instrument. A binding instrument would generally require more extensive discussions on the text and involve often complicated and lengthy adoption and entry into force processes by national governments.

Areas to cover

13 The following section lists the areas that may need to be addressed in developing interim measures as part of the Consultation process. The items listed are not exhaustive and definitive and may be added to or subtracted from. In developing interim arrangements listed below considerations should be given to the requirements of Parties concerned, current scientific and technical advice, best international practices for fisheries management and conservation and any other matter related to the fisheries of the South Pacific region.

14 Areas that may need to be addressed in developing interim measures as part of the Consultation process:

- a) Commitment to negotiate a treaty;
- b) Commitment to engage in fishing activities taking account of rights of coastal and developing states and based on international minimum standards;
- c) Data collection and scientific analysis;
- d) Monitoring, Control and Surveillance (MCS) arrangements;
- e) Fisheries management measures;
- f) Conservation and biodiversity arrangements;
- g) Transition from interim arrangements to the permanent Agreement or Commission;
- h) The amalgamation of existing arrangements into the competence of the South Pacific RFMO (e.g. the South Tasman Rise Arrangement¹).

¹ The Arrangement Between the Government of New Zealand and the Government of Australia for the Conservation and Management of Orange Roughy on the South Tasman Rise

Commitment to the process to establish an Agreement

15 It is important that participants in the International Consultation process for the South Pacific RFMO express a real commitment to the process. This commitment to cooperation should also extend to contributing resources to the process, either through financial contributions and/or in-kind resources, and define flag state duties with respect to the interim measures. In addition, the interim arrangements could involve a commitment that vessels flagged to a participant or observer involved in the Consultation process do not partake in any activity that could undermine the management and conservation objectives.

16 A commitment from participating States and entities can be linked to Article 18 of UNFSA and the FAO Compliance Agreement, which detail flag States duties with regard to vessel authorisation and documentation, vessel records, vessel markings, recording of catch data, MCS of vessels and compatibility with regional or sub-regional management and conservation measures.

Data Collection and Sharing Arrangements

17 The collection of appropriate catch and effort and biological data to support the stock assessment is an essential aspect in determining appropriate management and conservation measures, whether they are interim measures or through the work of the future South Pacific RFMO. To guide this work it will be imperative to establish a scientific working group or committee to provide the International Consultation process with scientific advice.

18 The scientific working group could be responsible for providing advice to the International Consultations on such issues as:

- The development of standards for:
 - data collection, compilation and submission;
 - data reporting;
 - data storage and access;
 - undertaking stock assessments of selected fish stocks as necessary;
 - provision of advice to the International Consultations.
- Reviewing current information and stock assessments of selected fish stocks by existing bodies (international and national);
- Assessing all information for possible conservation and management measures; and
- Providing advice on research priorities and determine the resources required for each research option.

19 A number of examples of data collection provisions can be found in the WCPFC, SEAFO and SIOFA Consultation processes. The Majuro Declaration provided a broad commitment to collect and share complete and accurate fisheries data in a timely manner:

“**Declare** their commitment to collect and share, in a timely manner, complete and accurate data concerning fisheries activities in accordance with annex 1 of the Implementing Agreement, as well as information from relevant research programmes;”

and sought to further address the issues in subsequent meetings;

“**Decide** to hold further sessions of the Conference in 1998 and 1999 to address, inter alia, the following matters:...

(e) mechanisms for the collection and exchange of fisheries data, scientific research and stock assessment;”

20 In contrast the SEAFO Interim Arrangements document provides detailed descriptions of the type and timing of information relating to the fishing operations and catch to be reported to the interim Secretariat. The document also details information required to support the stock assessment process.

21 The SIOFA Resolution on data collection calls upon States, regional economic integration organisations and fishing entities to provide information similar to the SEAFO Interim Arrangements, and also calls for historical data from participants and from other States and fishing entities known to have fished or to have been involved in unloading or transshipment of fisheries resources in the region.

Monitoring, Control and Surveillance Arrangements

22 The SIOFA example, with respect to orange roughy, illustrates the need for measures to reduce the potential for over-capacity and illegal, unreported, and unregulated (IUU) fishing activities, particularly in exploratory fisheries and where the fish stocks are susceptible to overfishing. The International Consultation may wish to establish a working group to provide advice on MCS related issues.

23 A number of treaty processes have required Parties to provide authorisation for vessels flying their flag to fish in the proposed area of the treaty and to provide a list of those authorisations to the Interim Secretariat. The South Pacific RFMO Interim Secretariat could coordinate the collation and distribution of the vessel register in accordance with UNCLOS. The register could be reviewed at the Consultations to assess whether any action needs to be taken to avoid over-capacity or overfishing on particular stocks.

24 The most comprehensive requirements are found in the SEAFO Interim Arrangements and include such possible notification requirements as the following:

- Name of vessel, registration number, previous names and port of registry;
- Any previous flag;
- International radio call sign;
- Details of owner and/or operator;
- Vessel capacity (length, hold and engine capacity);
- Type of fishing method.

25 Additional catch reporting requirements implemented by the SEAFO Interim Arrangements which could be included in high seas authorisations from flag States:

- Prior notification of intent to fish
- Regular catch reporting of retained catch
- Prior reporting of actual catches prior to landing in port
- Reporting of bycatch information, including discarding and non-target / non-commercial species

26 The International Consultations may wish to consider setting a standard for fishing activity within the potential geographical scope of the South Pacific RFMO that would provide a behavioural/fishing activities guide to participants and their fishing vessels. The standard, while applicable across all fishing activity in the region, would be imperative in ensuring a managed approach to fisheries where there is an absence of specific information on particular stocks and/or type of fishing practices. The standard should draw on, or link to, provisions from relevant international instruments and best international practice.

27 The fishing activity standard could be supported by vessel documentation requirements (in-terms of vessel registration documentation and trip authorisation) and monitoring and surveillance mechanisms, including carriage of observers (taking consideration of resource implications) and 100% Vessel Monitoring System coverage on the high seas. The SEAFO Interim Arrangements lists a range of documents, authorised by the flag State, which should be carried on board vessels during fishing operations.

28 In assessing other mechanisms to monitor catch levels the International Consultation could develop a database of key Pacific rim markets for relevant species. This information may also provide background data for interpreting trends in the commercial fisheries of the region.

Fisheries Management Measures

29 The International Consultations should seek preliminary scientific advice on stock status of selected fish stocks, and recommend appropriate interim management measures as may be necessary pending entry into force of the Agreement. Conservation and management measures should be commensurate with best international practice and the objective of the Consultation process to ensure the long-term sustainability of the stocks within the proposed geographical scope of the South Pacific RFMO.

30 The Consultations should base potential interim management measures on the best scientific evidence available.

31 In cases where fish stocks are known to be susceptible to over-fishing and little is known about the current stock status the Consultations should invoke a precautionary approach, as set out in Principle 15 of the Rio declaration (UN Conference on Environment and Development, 1992), when developing interim management arrangements.

32 The Consultations should ensure that interim measures for straddling fish stocks are compatible and do not undermine the effectiveness of the conservation and management measures adopted and applied in accordance with article 61 of the

Convention in respect of the same stock by coastal States within areas under national jurisdiction².

33 The Consultations should also seek information on current relevant bilateral and multi-lateral fisheries arrangements in the region. Such arrangements should be assessed with regard to cooperating with the Consultations and potential for absorption into the RFMO process. States and other Parties to such arrangements could be asked to provide plans for any future cooperation and integration plans for arrangements within the context of the broader Consultation process.

34 Types of interim measures that could be considered include:

- Catch limits
 - Total allowable catches (TACs) can be set for established periods based on historical catch data.
 - Trigger TACs can be set for exploratory fisheries after which further scientific advice will be required to guide management measures.
- Capacity limitations:
 - Participants could ensure that the number of vessels and total Gross Registered Tonnage (GRT) of flagged vessels fishing on the high seas does not increase beyond set limits (criteria for limits to be decided by the Consultations).
 - There should be mechanisms to provide for the rights and interests of developing coastal states and small island states of the region.
- Temporal and spatial measures, such as temporary closures of some spawning, aggregation and nursery areas to fishing, or to certain gear types.

Conservation and biodiversity arrangements

36 The Consultation could seek a commitment from participants to adopt the principles of existing international mechanisms and instruments, including but not limited to the FAO technical guidelines and International Plans of Actions (IPOAs) relevant to bycatch such as IPOA-Seabirds and IPOA-Sharks.

37 The Consultations should seek advice from the scientific working group on issues relating to bycatch and the impact of certain fishing practices, including destructive fishing practices, on the marine environment and ecosystems. A process should be established to assess the advice of the scientific working group and any concerns raised by Participants of the Consultations. The Majuro Declaration provided a commitment to hold consultations on certain technical matters during the inter-sessional period. The establishment of working groups that provide advice to the Consultations on implementing measures to address these issues is an option.

38 The Consultations could seek a commitment from participants to refrain from destructive fishing practices or practices with a potentially significant impact on

² Based in Paragraph 4 of the “Majuro Declaration” and Article 7 of UNFSA

vulnerable ecosystems and non-target species, either in relation to existing fishing activity, or new / expanded fishing activity during the period of the Consultations.

- 39 Examples of other texts that can be used to guide fishing activities include:
- Agreement on the Conservation of Albatrosses and Petrels (ACAP)
 - FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations
 - Convention of Migratory Species (CMS)

Transition from interim arrangements to the permanent Agreement or Commission

40 The Consultation should ensure interim measures adopted by the participants are compatible with the implementation of the treaty or agreement. The transition of interim arrangements can be developed as part of the interim arrangements themselves or through provisions in the text of the final agreement.