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## **Australia and New Zealand: revised draft article on highly migratory species**

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## DOCUMENT A/CONF.62/C.2/L.57/Rev.1

## Australia and New Zealand: revised draft article on highly migratory species

[Original: English]

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Highly migratory species, defined in the annex,<sup>26</sup> shall be regulated in accordance with the provisions of article . . . in the same manner as other species of fish found or taken in the economic zone, except that in recognition of the greater likelihood that more States will be required in the case of highly migratory species to co-operate in the conservation, management and control of such species as well as in the rational utilization of such species, the following additional provisions shall apply:

1. Any coastal State in whose economic zone or other waters<sup>27</sup> highly migratory species are found or taken and any State whose vessels take such species may request the opinion of the Director-General of the Food and Agriculture Organization of the United Nations (FAO) as to whether proper management of such species requires the setting up of an appropriate international or regional organization. The Director-General of FAO shall respond within 90 days of any such request, rendering his opinion, and if such opinion is positive, designating the members of the organization. In addition the Director-General of FAO shall respond within 90 days of any such request, rendering his opinion, and if such opinion is positive, designating the members of the organization. In addition the Director-General may recommend the institutional arrangements for the organization. All designated States shall have the obligation to take all action necessary to establish the organization within the shortest possible time.

2. All States shall co-operate fully with an appropriate international or regional organization (being either an organization which exists on the date of entry into force of this article or an organization set up pursuant to this article) established and empowered to issue regulations to conserve and manage the species concerned, including the allocation of national quotas.

3. In the absence of agreement to the contrary, decisions of the organizations shall require an affirmative vote of two thirds of its members.

4. The organization in formulating regulations shall take into account the following criteria:

(a) The coastal State's right in priority to other States to harvest the regulated species within its economic zone to the extent of its harvesting capacity subject only to conservation measures issued by the organization in order to maintain or restore the regulated species;

(b) The rational utilization of such species within its maximum sustainable yield, based on the best available scientific evidence;

(c) Traditional harvesting patterns both in the region and in the economic zone, taking into account the desirability of avoiding to the maximum extent possible severe economic dislocations in any State as a result of the application of this article;

(d) The criteria applicable to other than highly migratory species, as set out in article . . .

5. (a) The organization shall fix a uniform fee for fish caught whether inside or outside an economic zone, provided that a coastal State shall be exempt from such fee in respect of fish caught by its vessels in its economic zone or other waters.

(b) The uniform fee shall be fixed at a reasonable level, with a view to providing for:

(i) The organization's administrative expenses.

(ii) Effective contribution to management and development programmes for the species concerned.

(iii) Enforcement.

(iv) Scientific research;

(c) The coastal State shall receive the uniform fee paid in respect of fish caught by foreign vessels within its economic zone;

(d) The organization shall establish rules for the collection and payment of the uniform fee, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules;

(e) The organization may require a member to make a minimum contribution to its budget, taking into account fees received by the organization in respect of fishing by the member's nationals.

6. Each State shall give effect to the regulations issued by the organization:

(a) Within its economic zone or other waters it shall apply those regulations to all persons and vessels;

(b) Outside its economic zone it shall apply those regulations to vessels flying its flag.

7. [Further provisions dealing with enforcement outside the economic zone will be required.]

8. A State shall have the right to submit to the disputes tribunal any dispute relating to a regulation by either another State or by the organization. The disputes tribunal shall have jurisdiction to decide the matter and to modify or set aside any regulation from whatever source respecting the regulated species, including a regulation respecting fees, which it may find to be contrary to the provisions or principles of this article.

9. (a) In disputes involving scientific and technical matters the disputes tribunal shall request the opinion of experts from FAO and from any other appropriate source;

(b) The disputes tribunal shall have due regard to the desirability of avoiding a multiplicity of régimes or regulations within a single region of migration of a particular highly migratory species and to the interests both of coastal States and of distant-water fishing States in the species.

<sup>26</sup>A flexible procedure for the amendment of such a technical annex will be required.

<sup>27</sup>In this article the term "other waters" includes archipelagic, territorial, and internal waters. In these areas the coastal State shall apply regulations dealing with conservation measures.