

Bilateral cooperation between Australia and France in the Southern Ocean

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Abstract

Recognition of the many common interests arising out of the sharing of a maritime boundary between Australia and France in the sub-Antarctic has led to a formal cooperative relationship between the two countries. Two bilateral treaties are currently in force that encourage scientific research on marine living resources and enable cooperative surveillance of both countries' exclusive economic zones in the sub-Antarctic zone. The formal cooperative relationship has further enabled the two countries to establish less than treaty-level arrangements as well as informal, but coordinated, approaches that are leading to better environmental, economic and social benefits. The cooperative relationship has been enhanced by the cooperative and collaborative approaches by scientists and policy makers.

Coopération bilatérale entre l'Australie et la France dans l'océan Austral

Résumé

Reconnaissant les nombreux intérêts communs qui découlent du partage d'une frontière maritime dans les régions subantarctiques, l'Australie et la France ont établi des liens formels de coopération. Les deux traités bilatéraux actuellement en vigueur encouragent la recherche scientifique sur les ressources marines vivantes et prévoient une coopération en matière de surveillance des zones économiques exclusives des deux pays dans la zone subantarctique. Cette relation formelle de coopération a permis aux deux pays d'établir d'autres accords moins formels que ceux visés par un traité et d'autres approches informelles, mais coordonnées, qui apportent des avantages environnementaux, économiques et sociaux. De plus, les approches de coopération et de collaboration des chercheurs et décideurs politiques ont servi à resserrer davantage ces liens de coopération.

Keywords: Kerguelen Plateau, Australia–France cooperation, scientific cooperation, fisheries management, international fisheries accreditation, surveillance, illegal unreported and unregulated (IUU) fishing, fisheries laws

Introduction

Australia and France have a close bilateral relationship in the Southern Ocean. This relationship has developed around the common interest of protecting the marine ecosystem, including fishery resources. In the sub-Antarctic zone, France

and Australia share a particular interest in their neighbouring exclusive economic zones (EEZs) around the Australian territory of Heard Island and McDonald Islands (HIMI) and the French territories of the Kerguelen and Crozet Island groups, belonging to the Terres Australes et Antarctiques Françaises (TAAF). Both zones share the same

geomorphic feature (the Kerguelen Plateau), and both are harsh and remote environments which face similar challenges with respect to implementation of legislative and treaty obligations. Both EEZs support toothfish and icefish fisheries of which the toothfish fisheries are some of the most economically valuable. Illegal fishing for toothfish from the late 1990s to the mid-2000s was a major challenge in the Australian and French EEZs and due to the large amount of toothfish removed, as well as likely high levels of incidental mortality of by-catch, including threatened and vulnerable seabird species (Tuck et al., 2003), was recognised by both governments as the most significant issue impacting the long-term sustainability of the Kerguelen Plateau ecosystem. Both EEZs also have domestic marine protected areas. The HIMI Marine Reserve, established in October 2002 and expanded in March 2014, now covers 71 200 km². In the Kerguelen Islands EEZ, the Réserve naturelle nationale des Terres australes françaises was established in 2006 and was expanded in 2016 to cover 389 820 km² into the marine part of the reserve, including 111 049 km² of strict marine protection zones, where fishing activities are prohibited. Whole of the HIMI Marine Reserve is an IUCN Category 1A Strict Nature Reserve. Parts of the no-take areas of both EEZs are adjacent and have been based upon similar principles of bioregionalisation and ecosystems values.

The cooperative relationship between Australia and France was formalised by the signing in 2003 of a bilateral agreement that creates a framework to enhance cooperative surveillance of both countries' EEZs and encourage scientific research on marine living resources in the area of cooperation in the Southern Ocean ([the 2003 Agreement](#))¹. The Agreement entered into force on 1 January 2005. A further agreement aimed specifically at tackling illegal fishing in the Australian and French EEZs was signed in 2007 ([the 2007 Agreement](#))².

Since the 2003 Agreement entered into force, Australian and French scientists have held regular

joint working sessions which have often concluded with a joint exchange with government officials and fishery stakeholders. In addition, since 2004 Australian and French governments have been cooperating on surveillance activities and have undertaken joint surveillance patrols on the Kerguelen Plateau³.

The objective of this paper is to highlight the Australia–France cooperative relationship in the sub-Antarctic which enables both countries to better achieve environmental, economic and social benefits by working collaboratively together. Concarneau and Hobart symposiums, organised respectively in 2010 and 2017, are good examples of the success French and Australian parties can achieve through cooperation.

French–Australian scientific cooperation in the Southern Ocean

Following the entry into force of the 2003 Agreement in 2005, Australia and France held bilateral discussions in conjunction with the 2005 and 2006 meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) with a view to considering mechanisms to implement the 2003 Agreement. These included the aspect of the 2003 Agreement focused on cooperation in scientific research. Key drivers of these discussions were the need to assess the impacts of fishing on the population status of Patagonian toothfish, in particular the residual impacts of illegal fishing. Tagging studies, initiated in the Australian EEZ in the late 1990s indicated that there were links between the toothfish populations in the respective EEZs (Welsford et al., 2011, Peron et al., 2016), and fleets flagged to both nations actively targeted toothfish since the mid-1990s. Consequently, it was recognised that there was a need to evaluate hypotheses regarding toothfish stock structure on the Kerguelen Plateau and to develop a joint population status model for Patagonian toothfish, noting that each country has the responsibility

¹ Treaty between the Government of Australia and the Government of the French Republic on cooperation in the maritime areas adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands signed in Canberra on 24 November 2003 (Appendix A).

² Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands signed in Paris on 8 January 2007 (Appendix B).

³ Between 2004 and 2014, France and Australia made a total of 58 observations of IUU vessels in the French and Australian EEZs, and in the adjacent CCAMLR area.

for undertaking a stock assessment for their respective EEZ. In order to achieve this, it was agreed that it was important for Australian and French scientists to work together to exchange fisheries and biological data.

The scientific work commenced with a workshop at the Muséum national d'Histoire naturelle in Paris in 2007. This initial workshop focused on evaluating the stock structure of toothfish across the plateau and determining the cooperative research required in order to achieve this. Since this time, joint workshops have been regularly held, primarily at the Muséum national d'Histoire naturelle. Three of these workshops (2009, 2011 and 2015) concluded with joint meetings with officials at which the results of the scientific workshops have been presented and there has been discussion and agreement on the next steps on cooperative research and fisheries management.

A project funded through the Australian Fisheries Research and Development Corporation (FRDC) looking at management strategies, as well as statistically estimating the extent of population linkages across the Kerguelen Plateau, provided the opportunity for further advances in information exchange and joint analyses. A key success of this project was both Australian and French scientists being co-investigators and a formal data-sharing arrangement between the Australian Antarctic Division and the Muséum national d'Histoire naturelle. The project funded two post-doctoral positions enabling in-depth analyses of combined French and Australian datasets that provided a much clearer picture of toothfish population and fisheries dynamics of the entire Kerguelen Plateau, which were then able to be used to evaluate the sustainability of the management procedures applied in each EEZ, and recommend appropriate adjustments (Burch et al., 2017).

Australian and French scientists have collected considerable data on fisheries, commercial fish, non-target fish and invertebrate species through their respective observer and research programs, for example, through the POKER biomass surveys conducted in the French EEZ in 2006, 2010, 2013 and 2017 (e.g. Duhamel and Hautecoeur, 2009; Duhamel et al, 2011), and the annual surveys conducted in the Australian EEZ since 1997 (Constable and Welsford, 2011). The overarching formal and informal relationship has facilitated the sharing

of data under a data management arrangement between the key respective organisations. Data from these surveys provides information on potential yields, by assessing fish stocks, which inform catch limits for fisheries in the respective EEZs. This data also provides information on by-catch species, particularly shark species (Chazeau et al., 2019), skates species (Nowara et al., 2017) and vulnerable marine ecosystem (VME) indicator species (CCAMLR, 2009). VME data has been used (see Martin et al., 2019) to identify ecoregions over the Kerguelen Plateau and define strict marine protection zones of the réserve naturelle nationale during the expansion process.

Recognising the biological and ecological linkages across the Kerguelen Plateau, Australian and French scientists continue to work together to develop a joint scientific understanding of the region's ecosystems and population dynamics of toothfish across the Kerguelen Plateau. In light of the ongoing cooperative relationship and building on the 2003 Agreement, both parties continue to further develop their collaborative scientific research in support of the ecosystem-based fisheries management at the scale of the Kerguelen Plateau. Current collaborative efforts are focused on research questions in the following areas:

- data management for assessments
- Kerguelen Plateau-wide surveys
- tagging fish during fishing operations
- monitoring (indicators) of ecosystem change
- stock assessments
- modelling
- materials for use by managers, policy makers and stakeholders to inform the management of the fisheries on both sides of the Plateau.

Furthermore, Australia and France have held two Kerguelen Plateau Symposia. The first on Marine Ecosystem and Fisheries held in Concarneau, France, in April 2010 (Duhamel and Welsford, 2011), and the second on Fish, Fisheries and Ecosystem on the Kerguelen Plateau: future science in support of ecosystem-based fisheries management held in Hobart, Australia, in November 2017.

International management arrangements

CCAMLR is an international treaty body that practices an ecosystem-based management approach. The Kerguelen Plateau region is within

the CCAMLR area. Australia and France have presented a number of joint papers to CCAMLR regarding fisheries management on the Kerguelen Plateau. These have included approaches to population models, as well as extending to other joint research efforts off the coast of East Antarctica. In addition, Australia and France presented an earlier version of this paper to the 30th annual meeting of CCAMLR (Delegations of France and Australia, 2011).

Scientific cooperation also extends to joint expeditions (e.g. CEAMARC, Beaman and O'Brien, 2009) that lead to the inventory of fauna and flora in order to model marine ecosystems (a process called bioregionalisation (Grant et al., 2006)) of the Southern Ocean. This modelling was fundamental in the scientific justification for Antarctic marine protected areas (MPAs). Scientific cooperation between Australia and France on this topic covers parts of East Antarctica, including the joint proposal by Australia and France (later joined by the European Union) to designate an MPA off East Antarctica (Delegations of Australia and France, 2014). The proposal, currently under consideration by CCAMLR, was recognised as being based on best available science. This cooperation was recognised in a Statement by The Honourable Malcolm Turnbull, Prime Minister of the Commonwealth of Australia, and His Excellency Emmanuel Macron, President of the French Republic, in May 2018⁴.

Outcomes for fisheries management on the Kerguelen Plateau

One of the most significant outcomes from the cooperative and collaborative relationship between Australia and France has been the recognition of the biological and ecological linkages across the Kerguelen Plateau and the continued incorporation of this knowledge into the management of the fisheries by Australia and France.

One benefit to the Australian and French fishing industry has been the gaining of third-party accreditation of their respective toothfish fisheries. In 2012, the Australian HIMI Patagonian toothfish fishery gained Marine Stewardship Council (MSC) certification. The Patagonian toothfish fisheries around Kerguelen Island have also been successful in gaining MSC certification⁵ in 2013⁶. The HIMI toothfish fishery and the Kerguelen toothfish fishery were both recertified for another five years in June 2017 and December 2018 respectively.

Of particular note, the MSC also stated that the uncertainty about the linkage between the toothfish in the Australian and French EEZs is no longer a major issue. This recognises the effectiveness of scientific research collaboration between Australia and France, which has demonstrated, and now incorporated into management advice, the links between toothfish populations across the Kerguelen Plateau. The MSC noted that it considered that the HIMI and French fisheries are harmonised to the extent that the impacts on the whole population have been taken into account. The differences that remain are justified as they pertain to the fishery-specific aspects of their harvest strategies and these differences do not threaten the achievement of the relevant MSC outcomes⁷.

Cooperative surveillance of the French and Australian EEZs and cooperative enforcement of fisheries law

Intensive IUU fishing for Patagonian toothfish emerged towards the end of the 1990s across the Kerguelen Plateau (Agnew, 2000; Duhamel, 2003; Duhamel et al., 2011). Cooperation between States that share similar concerns in the enforcement of fisheries law has been one of the most effective ways to prevent, deter and eliminate IUU fishing, particularly in harsh and remote areas.

⁴ Vision Statement on the Australia–France Relationship by The Honourable Malcolm Turnbull, Prime Minister of the Commonwealth of Australia, and His Excellency Emmanuel Macron, President of the French Republic, made on 02 May 2018, found at www.pm.gov.au/media/vision-statement-australia-france-relationship-honourable-malcolm-turnbull-prime-minister.

⁵ <https://fisheries.msc.org/en/fisheries/sarpc-toothfish/@@certificates>

⁶ The Crozet component of the fishery was certified by MEC (ME Certifications Ltd) on 16 December 2016 through an expedited assessment as an extension of scope of the certified SARPC toothfish Kerguelen fishery. <https://fisheries.msc.org/en/fisheries/sarpc-toothfish/@@assessments>, Public Certification Report, page 14.

⁷ Heard Island and McDonald Islands (HIMI) Toothfish Fishery MSC Full-Assessment Report (15 June 2017), Prepared by: Dr Sabine Daume, Mr Alexander 'Sandy' Morison and Ms Sascha Brand-Gardner, found at <https://fisheries.msc.org/en/fisheries/australian-heard-island-and-mcdonald-islands-toothfish-icefish-fisheries/@@assessments>, pages 43 and 44.

Joint surveillance missions in the area of cooperation, pursuant to the 2003 Agreement, started in 2005. There has been a significant decrease in illegal fishing activities in the area since then, with the last seizure of vessels being in 2004, one in Australian waters and the other in French waters.

The success of the joint surveillance missions and the resolve to tackle IUU fishing by Australia and France resulted in the 2007 Agreement, aimed specifically at tackling illegal fishing in the Australian and French EEZs. It builds upon the 2003 Agreement and provides for cooperative enforcement actions against vessels believed to be fishing illegally, including joint surveillance and enforcement missions as well as ship riding and mutual assistance when a hot pursuit is engaged. It covers fisheries enforcement activities such as the boarding, inspection, hot pursuit, apprehension, seizure and investigation of fishing vessels that are believed to have violated fisheries laws. The 2007 Agreement contains modern hot pursuit provisions that allow the continuance of hot pursuit in contemporary circumstances, including with evidence obtained by, or on behalf of, the authorised vessel by technical means.

Australia and France consider the 2003 and 2007 Agreements provide a good model for cooperation in the sub-Antarctic and a means to collaboratively achieve marine conservation and sustainable fisheries management objectives. Following the success of these Agreements in facilitating cooperative surveillance operations and helping eliminate illegal fishing inside the French and Australian EEZs, the focus of both countries has turned to maintaining this achievement and continuing to monitor fishing activities in the region.

Conclusion

Cooperating on two key areas of interest, namely science focused on ecosystem-based fisheries management and surveillance and compliance, Australia and France have been able to achieve environmental, economic and social benefits in the sub-Antarctic of mutual interest. The continuation of this relationship into the future will continue to be important as we seek to respond to challenges across the Kerguelen Plateau resulting from climate change.

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**TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT
OF THE FRENCH REPUBLIC ON COOPERATION IN THE MARITIME AREAS
ADJACENT TO THE FRENCH SOUTHERN AND ANTARCTIC TERRITORIES (TAAF),
HEARD ISLAND AND THE MCDONALD ISLANDS**

(CANBERRA, 24 NOVEMBER 2003)

ENTRY INTO FORCE: 1 FEBRUARY 2005

AUSTRALIAN TREATY SERIES

[2005] ATS 6

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC, hereinafter referred to as “the Parties”,

RECALLING their rights and responsibilities as coastal States under the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as “the Convention”), and as Parties to the Convention on the Conservation of Antarctic Living Marine Resources of 20 May 1980 (hereinafter referred to as “the CAMLR Convention”),

RECOGNISING that the Parties exercise jurisdiction, in accordance with international law, for the purpose of exploring, exploiting, conserving and managing the living resources within the maritime areas adjacent to the Australian territory of Heard Island and the McDonald Islands and the French Southern and Antarctic Territories (TAAF),

RECALLING the principles of the Code of Conduct for Responsible Fishing of 31 October 1995,

NOTING the Parties’ concerns at the continued problem of illegal fishing, within the maritime areas adjacent to these maritime areas, in continued breach of the laws and regulations of the Parties,

MINDFUL that cooperation between the Parties is essential to the protection of their national interests in these maritime areas,

DETERMINED to enhance their ability to take cooperative action to preserve and protect fisheries,

CONSCIOUS that the cooperative action between the Parties should encompass cooperative surveillance and law enforcement operations, including through developing further agreements or arrangements,

RECOGNISING the need to promote the progressive development of international law in order to further their joint objectives;

DESIRING to ensure the implementation of the Agreement of 15 July 1985 between the Government of Australia and the Government of the Republic of France relating to the Exchange and Communication of Classified Information,

CONSCIOUS of the important role that the Agreement of 4 January 1982 on Maritime Delimitation between the Government of Australia and the Government of the French Republic (hereinafter referred to as “the Maritime Delimitation Agreement”) will play in this Treaty,

DESIRING to also promote scientific research in those maritime areas, and to further develop friendly relations between the Parties,

AS A FIRST STEP, HAVE AGREED AS FOLLOWS:

Article 1

1. This Treaty applies to activities conducted in relation to:
 - (a) the territorial seas and exclusive economic zone of the Australian territory of Heard Island and the McDonald Islands as defined respectively in the Seas and Submerged Lands Act 1973, proclamations pursuant thereto; and
 - (b) the territorial seas and exclusive economic zone of the French territories of Kerguelen Islands, Crozet Islands, Saint-Paul Island and Amsterdam Island as defined respectively in Law No. 71-1060 of 24 December 1971 and Law No. 76-655 of 16 July 1976; Decree No. 78-112 of 11 January 1978, and Decree No. 78-144 of 3 February 1978.
2. “Area of Cooperation” means the area of application of this Treaty as defined in paragraph (1) above. The boundary between the Australian maritime areas of Heard Island and McDonald Islands and the French maritime area of Kerguelen Islands is the same as that defined in paragraph 1 (points S1 to S7) of Article 2 of the Maritime Delimitation Agreement.
3. “Fishing” includes:
 - (a) locating, catching, taking or harvesting fish;
 - (b) attempting to locate, catch, take or harvest fish;
 - (c) engaging in any other activity which may result in the locating, catching, taking or harvesting of fish;
 - (d) placing, searching for or recovering fish aggregation devices or associated electronic equipment such as radio beacons;
 - (e) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (a) to (d) above;
 - (f) use of any vehicle, air or sea borne, for any activity described in sub-paragraphs (a) to (e) above except for emergencies involving the health or safety of the crew or the safety of an air or sea borne vehicle; and
 - (g) the processing, carrying or transshipping of fish.
4. “Fishing vessel” means any boat, ship or other craft which is used for, or equipped to be used for fishing, including mother ships and any other vessels directly engaged in, or supporting such fishing operations.
5. “Cooperative surveillance” means fisheries surveillance activities, identification and recognition of vessels, in particular vessels that appear to be in breach of national or international fisheries law. These activities shall take the form of missions carried out:

- (a) within the area defined in paragraph 1(a) above – by French surveillance vessels and/or aircraft and/or any other means;
- (b) within the area defined in paragraph 1(b) above – by Australian surveillance vessels and/or aircraft and/or any other means;⁸ or
- (c) within the Area of Cooperation, by the personnel authorised by the competent authorities of one of the Parties aboard surveillance vessels and/or aircraft of the other Party pursuant to a cooperative surveillance agreement or arrangement made under Annex III.

Article 2

The object of this Treaty is to enhance:

- (a) cooperative surveillance;
- (b) cooperative scientific research on marine living resources.

Article 3

1. The Parties may agree by common consent on procedures and forms of assistance, to facilitate the realisation of the aims of this Treaty.
2. Cooperative surveillance missions may be undertaken, with the consent of the competent authorities of each of the Parties, in conformity with the law applicable in the Area of Cooperation and with the common procedures established under this Treaty, and in particular under Annex I thereof. The competent authorities may attach conditions to their consent.
3. Each Party may request the assistance of the other Party when engaged in a hot pursuit, within the meaning of Article 111 of the Convention. Without prejudice to the agreements that may be reached pursuant to Article 2 of Annex III of this Treaty, such assistance shall include logistical support required to carry out the pursuit properly, including but not limited to the provision of food supplies, fuel and means of transport.
4. The Parties shall agree on a system for the surveillance of fishing in the Area of Cooperation. This may include:
 - (a) a vessel monitoring system;
 - (b) the adoption of agreed minimum standards for the vessel marking of fishing vessels licensed to fish in the Area of Cooperation.
5. Cooperative scientific research on marine living resources may be undertaken throughout the Area of Cooperation, in conformity with the law applicable in this area and with the modalities, if any, established in accordance with Annex II of this Treaty.

Article 4

In cases of hot pursuit commenced in accordance with Article 111 of the Convention, in relation to the Area of Cooperation, including hot pursuit commenced during activities pursuant to Article 1(5) and Annex III,

⁸ *Ab initio* rectification of Article 1, paragraph 5, subparagraphs (a) and (b) in accordance with exchange of notes dated 24 and 26 January 2005. Treaty entered into force on 26 January 2005.

such hot pursuit by a vessel or other craft authorised by one of the Parties may continue through the territorial sea of the other Party, provided that the other Party is informed, and without taking physical law enforcement or other coercive action against the vessel pursued during this phase of the hot pursuit.

Article 5

1. The competent authorities of the Parties shall, to the extent permitted by their national law and policies, exchange, inter alia, information about:
 - (a) the location, movements and other details of fishing vessels within the Area of Cooperation, including those suspected of fishing illegally;
 - (b) licensing of fishing vessels to conduct fishing within the waters mentioned in Article 1 paragraph 1 (a) and (b) above, belonging to the Area of Cooperation;
 - (c) cooperative surveillance activities;
 - (d) prosecutions instituted by each Party relating to illegal fishing in its territorial waters or exclusive economic zone included within the Area of Cooperation; and
 - (e) scientific research on marine living resources relating to the Area of Cooperation.
2. The competent authorities of the Parties shall develop standard forms and procedures for regular reporting and communication of the information provided under this Article. The information referred to in paragraph 1 (d) above shall be exchanged among the competent judicial, prosecutory or investigatory authorities of the two Parties.
3. The competent authorities of the Parties shall establish a shared vessel register of fishing vessels licensed to fish in their respective waters belonging to the Area of Cooperation.
4. To the extent that information passing between the Parties in accordance with this Treaty is information to which the Parties are privy, such information shall not be provided to third Parties by the Party that received the information without the written consent of the provider. Nothing in this clause shall prevent a Party from meeting its reporting obligations under the Convention or the CAMLR Convention.
5. Each Party shall provide written notice to the other Party identifying its competent authorities and contact details for those authorities. The first notice shall be provided within one month of the commencement of the Treaty. If at any time a Party's competent authorities change, that Party shall give notice in writing of the change within one month after the change has commenced.

Article 6

The competent authorities of the Parties shall hold consultations every two years to examine the implementation and effect of this Treaty.

Article 7

Nothing in this Treaty shall be deemed to derogate from the Parties' rights and obligations arising out of other international agreements to which either of them is a party, at the time of entry into force of this Treaty.

Article 8

The Annexes to this Treaty form an integral part of it and a reference to this Treaty includes a reference to the Annexes.

Article 9

This Treaty shall enter into force on the date on which the Parties have notified each other in writing, through diplomatic channels, that their internal procedures necessary for its entry into force have been met.

Article 10

This Treaty may be terminated by formal notification by one Party, by a note verbale, to the other Party. Termination shall take effect 12 months after the note verbale is received by the other Party.

This Treaty may be amended at any time by common consent of the Parties. Any amendment shall take effect conditional upon completion of the procedures laid down in Article 9 of this Treaty.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

DONE in duplicate at Canberra this 24th of November 2003 in the English and French languages, both being equally authentic.

Alexander Downer
Minister for Foreign Affairs
For the Government of
the Commonwealth of Australia

Renaud Muselir
Secretary of State for Foreign Affairs
For the Government of
the French Republic

Annex I

APPROVED PROCEDURE FOR COOPERATIVE SURVEILLANCE

Article 1

The competent authorities of each of the Parties shall communicate information concerning the timetable and duration of planned cooperative surveillance missions to the other Party, so as to permit effective surveillance of the Area of Cooperation.

Article 2

The competent authorities of the Party conducting a cooperative surveillance mission shall provide a report on this mission to the other Party as soon as practicable. Each Party shall notify the Secretariat of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) of any information resulting from any mission which took place in its territorial waters or in its exclusive economic zone mentioned in Articles 1(1) and 1(2) of this Treaty and which must be transmitted to CCAMLR on the basis of the CAMLR Convention.

Annex II

COOPERATIVE SCIENTIFIC RESEARCH

Article 1

1. The national bodies principally responsible for research on marine living resources in the Area of Cooperation will promote and coordinate the conduct of research aimed at achieving the object of the Treaty.
2. The Parties shall notify each other of the national body or bodies that are principally responsible for research on marine living resources in the Area of Cooperation.

Article 2

To facilitate the development and effective operation of research programs, scientists of each Party shall meet on dates fixed as mutually convenient. The Parties shall facilitate, as far as possible, direct scientist-to-scientist communication.

Article 3

Cooperative research activities may take any of the following forms:

- (a) exchanges of scientific and other personnel;
- (b) joint research projects;
- (c) exchanges of information and research data;
- (d) logistic and technical cooperation; or
- (e) other forms of cooperation as may be mutually decided by the Parties.

Article 4

The modalities under which cooperative research projects take place shall be mutually decided as appropriate from time to time and shall address the following elements:

- (a) the title, description and objectives of the planned project;
- (b) a national contact point for the project;
- (c) a project leader for each Party;
- (d) the division of activities between the Parties;
- (e) the financial responsibilities of the Parties;
- (f) the logistical responsibilities of the Parties;
- (g) without prejudice to the implementation of the Agreement of 15 July 1985 between the Government of Australia and the Government of the French Republic relating to the Exchange and Communication of Classified Information, the arrangements for sharing and reporting of data, including any restrictions arising from the confidentiality of data and publication of results from the project; and
- (h) the duration of the planned project.

Annex III

COOPERATIVE SURVEILLANCE ACTIONS THAT MAY BE THE SUBJECT OF FURTHER AGREEMENTS

Article 1

Any agreement or arrangement on cooperative surveillance should include in particular:

- (a) the modalities of the missions mentioned in Article 3 of the Treaty;
- (b) the alternative means by which communication of the results of surveillance missions should take place;

- (c) questions relating to the reports which the Party conducting the cooperative surveillance shall communicate to the other Party;
- (d) whether the patrols can contain officials of both Parties and, if so, under what conditions;
- (e) additional powers, if any, to be granted to the Party conducting cooperative surveillance missions.

Article 2

The Parties may conclude agreements or arrangements that may also provide for law enforcement operations possibly accompanied by forcible measures.

**AGREEMENT ON COOPERATIVE ENFORCEMENT OF FISHERIES LAWS
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE FRENCH REPUBLIC
IN THE MARITIME AREAS ADJACENT TO THE FRENCH SOUTHERN AND
ANTARCTIC TERRITORIES, HEARD ISLAND AND THE MCDONALD ISLANDS**

**(PARIS, 8 JANUARY 2007)
ENTRY INTO FORCE: 7 JANUARY 2011**

**AUSTRALIAN TREATY SERIES
[2011] ATS 1**

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC,
hereinafter referred to as “the Parties”,

Recalling their rights and responsibilities as coastal States under the United Nations Convention on the Law of the Sea of 10 December 1982, and as Parties to the Convention on the Conservation of Antarctic Living Marine Resources of 20 May 1980,

Recognising the strong foundation of cooperation established in the field of fisheries surveillance between the Parties by the Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands (hereinafter referred to as “the Treaty”),

Recalling Article 2 of Annex III to the Treaty with respect to concluding agreements that provide for law enforcement operations accompanied by forcible measures,

Desiring to promote cooperative enforcement of the laws of the Parties in their respective maritime areas,

Concerned about the continued problem of illegal, unreported and unregulated fishing within and adjacent to the Parties’ maritime areas,

Recognising the practical difficulties faced by the Parties of enforcing their laws in respect of illegal, unreported and unregulated fishing within their respective maritime areas in the Southern Oceans,

Determined therefore to enhance their ability to enforce effectively their fisheries laws and deter breaches of such laws,

HAVE AGREED AS FOLLOWS:

Article 1 – Interpretation and Application

1. This Agreement shall be interpreted consistently with the Treaty. Terms defined in the Treaty have the same meaning in this Agreement.
2. This Agreement shall have the same area of application as the Treaty.
3. “Controller” means an officer from one Party who is authorised by its respective Party to exercise cooperative enforcement activities on board an authorised vessel of the other Party.

4. “Cooperative enforcement” means fisheries enforcement activities such as the boarding, inspection, hot pursuit, apprehension, seizure and investigation of fishing vessels that are believed to have violated applicable fisheries laws, undertaken by one Party in cooperation with the other Party.
5. “Authorised vessel” means:
 - a. for Australia, any Australian Defence Force vessel or aircraft, or any other vessel or aircraft owned, chartered or otherwise under the control of the Australian Government and being used for the purpose of law enforcement or surveillance and which is clearly marked and identified as being on government service; and
 - b. for the Republic of France, any French Defence Force vessel or aircraft, or any other vessel or aircraft owned, chartered or otherwise under the control of the French Government and being used for the purpose of law enforcement or surveillance and which is clearly marked and identified as being on government service.

Article 2 – Objective

The object of this Agreement is to enhance cooperative enforcement of fisheries laws in the Area of Cooperation.

Article 3 – Cooperative Enforcement

1. Controllers shall exercise cooperative enforcement activities aboard an authorised vessel of the other Party, with the consent of the other Party. Controllers shall not be required by the other Party to conduct activities contrary to the law of the Controller’s Party.
2. Cooperative enforcement activities shall only be undertaken when there is a Controller on board an authorised vessel.
3. Paragraphs 1 and 2 of this Article apply in:
 - a. the Area of Cooperation;
 - b. outside the Area of Cooperation in situations of hot pursuit pursuant to Article 4; and
 - c. outside the Area of Cooperation where a vessel is acting as a mother ship and one of its boats or other craft, working as a team, is within the Area of Cooperation.
4. Cooperative enforcement activities undertaken pursuant to this Agreement shall be conducted in conformity with the law applicable in the maritime zone in which the activities are undertaken or, in the case of hot pursuit, the maritime zone from which a hot pursuit is commenced.
5. Each Party shall ensure that its Controllers, when conducting cooperative enforcement activities pursuant to this Agreement, act in accordance with its applicable national laws and policies and with international law and accepted international practices.
6. To facilitate implementation of this Agreement, each Party shall ensure that the other Party is informed of applicable laws and policies.
7. Authorised vessels of each Party may engage in the use of disruptive measures, to the extent permitted by their national law and policies, and consistent with international law, as a means of hindering the activities of fishing vessels believed to be fishing illegally in the Area of Cooperation.

8. Any cooperative enforcement activity involving the use of force against a fishing vessel shall require the joint authorisation of both Parties.
9. The Parties shall, as soon as possible, enter into arrangements regarding cooperative enforcement, including:
 - a. operating procedures;
 - b. the identification of authorised vessels; and
 - c. the identification of officers, such as a requirement to be uniformed and to carry and display an authorized card; and
 - d. flags and penants displayed by authorised vessels.

Article 4 – Hot Pursuit

1. Hot pursuit of a fishing vessel believed to be fishing illegally may be commenced by an authorised vessel of either Party pursuant to this Agreement.
2. Hot pursuit may be commenced upon fulfilling the following conditions:
 - a. the authorities of the relevant Party have good reason to believe that the fishing vessel or one of its boats has violated the laws of the Party within whose maritime zone the vessel is detected. The basis for such belief may include:
 - i. direct visual contact with the fishing vessel or one of its boats by the authorised vessel; or
 - ii. evidence obtained by or on behalf of the authorised vessel by technical means; and
 - b. a clear signal to stop has been given to the fishing vessel by or on behalf of the authorised vessel which enables it to be seen or heard by the fishing vessel.
3. Hot pursuit is deemed to have continued without interruption from the commencement of the hot pursuit to interception as long as the relevant authorised vessel or vessels:
 - a. maintain continual positive identification and tracking of the fishing vessel by, inter alia, the means described in paragraphs 2(a)(i) and (ii) of this Article; and
 - b. from time to time continue to signal the fishing vessel to stop.
4. An authorised vessel of one Party may take over the hot pursuit commenced by an authorised vessel of the other Party.
5. For the avoidance of doubt, the hot pursuit of a fishing vessel by a Party's authorised vessel from that Party's maritime zone is not subject to this Agreement even where an officer of the other Party is aboard the authorised vessel or the hot pursuit occurs through the maritime zone of the other Party.

Article 5 – Jurisdiction

1. The Party whose authorised vessel, and its crew, is undertaking cooperative and enforcement activities in accordance with this Agreement, shall take all appropriate measures to ensure that the laws of the other Party are observed and respected.

2. Officers of one Party shall enjoy immunity from the criminal, civil and administrative jurisdiction of the other Party for acts performed in the course of carrying out cooperative enforcement activities pursuant to and consistent with this Agreement.
3. A Party shall, where one of its officers has allegedly breached the laws of the other Party, ensure appropriate action, consistent with its laws and regulations, is taken against its officers.

Article 6 – Post-Apprehension Cooperation

1. Vessels seized by a Party pursuant to Article 3 in the maritime zone of the other Party, or following a hot pursuit undertaken on behalf of the other Party pursuant to Article 4, shall, together with the persons, equipment and any documents and catch on board, be handed over as soon as possible to the authorities of the other Party.

Article 7 – Report of Cooperative Enforcement Activities

1. The competent authorities of the Party conducting cooperative enforcement activities in the maritime zone of the other Party pursuant to this Agreement shall provide a report on those activities to the other Party as soon as practicable.
2. The report shall include:
 - a. The details of any enforcement activities undertaken pursuant to Article 3, including the time and position the activities were undertaken;
 - b. The details of any hot pursuit undertaken pursuant to Article 4;
 - c. The details of any vessel that enforcement activities were undertaken against, including any information held concerning the crew members or owners of the vessel;
 - d. Any information that could reasonably assist the prosecution of the crews, charterers, owners or beneficial owners of a relevant vessel, or beneficiaries of any illegal fishing activity, for breaches of the applicable law in the Area of Cooperation; and
 - e. Any other information agreed to by the Parties.
3. The Parties may agree in writing at any time, to vary the required information for inclusion in a report under this Article.

Article 8 – Financing of Cooperative Enforcement Activities

1. The costs incurred during cooperative enforcement activities shall be borne by Party undertaking them.
2. The proceeds from any sale of vessels, fishing equipment, fuel and lubricant, or catch which has been forfeited following cooperative enforcement activities shall belong to the Party whose laws are believed to have been violated.
3. Where the costs undertaken by one Party far exceed the costs undertaken by the other Party, the Parties may agree to recover those additional costs during consultations referred to in Article 11.

Article 9 – International Cooperation

Each Party shall use its best efforts to ensure that fishing vessels considered to be fishing illegally are apprehended and that illegal catches are seized or denied transshipment in their respective ports or the ports of other States.

Article 10 – Exchange of Information

1. Additionally to Article 5 of the Treaty, the competent authorities of the Parties shall, to the extent permitted by their national law and policies, exchange information about cooperative enforcement activities.
2. Information provided by a Party pursuant to this Agreement shall not be disclosed to third Parties by the Party that received the information without the written consent of the Party providing the information. Nothing in this paragraph shall prevent a Party from meeting its reporting obligations under the Convention or the CCAMLR Convention.

Article 11 – Review

The competent authorities of the Parties shall hold consultations at least every two years to examine the implementation and effect of this Agreement, including financial arrangements.

Article 12 – Dispute Settlement

If any dispute arises between the Parties concerning the interpretation or application of this Agreement, the Parties shall consult between themselves with a view to having the dispute resolved by negotiation or other agreed peaceful means.

Article 13 – Entry into Force and Amendment

1. This Agreement shall enter into force on the date on which the Parties have notified each other in writing, through diplomatic channels, that their internal procedures necessary for its entry into force have been met.
2. This Agreement may be amended at any time by common consent of the Parties. Any amendment shall enter into force conditional upon completion of the procedures laid down in paragraph 1 of this Article.

Article 14 – Termination

1. This Agreement terminates if the Treaty is terminated.
2. This Agreement may be separately terminated by formal notification by one Party in writing, through diplomatic channels, to the other Party. This Agreement shall terminate six months after the notification is received by the other Party, except that the obligations under paragraph 2 Article 10 subsisting at the time of termination shall continue indefinitely until performance of them by one Party is waived in writing by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

DONE in duplicate at Paris this Eighth day of January 2007, in the English and French languages, both being equally authentic.

**For the Government of
Australia:**
Senator the Hon. Eric Abetz
Minister for Fisheries, Forestry and
Conservation

**For the Government of the
French Republic:**
M. Dominique Bussereau
Minister for Agriculture and Fisheries