

# ANTARCTIC MARINE LIVING RESOURCES BILL

## EXPLANATORY NOTE

THE purpose of this Bill is to give effect to the Convention on the Conservation of Antarctic Marine Living Resources.

The Convention results from a decision of the Ninth Antarctic Treaty meeting, and is to prevent any threat to the survival of the living resources in the waters surrounding Antarctica by implementing a conservation system. The Convention obliges the parties to it to ensure that any fishing or other associated activities in the Convention Area (a term defined in the Bill) are carried out in accordance with its provisions.

An equivalent measure, the Antarctic Marine Living Resources Conservation Act 1981 (Commonwealth 1981, No. 30) was passed by the Commonwealth of Australia earlier this year.

*Clause 1* relates to the Short Title, commencement, and application. The Bill is expressed to come into force on 1 January 1982, and applies to anything done or omitted to be done in New Zealand fisheries waters, or on any New Zealand ship or aircraft, or by any New Zealand citizen.

*Clause 2* relates to interpretation.

*Clause 3* provides that the Bill is to bind the Crown.

*Clause 4* prohibits the taking of marine organisms (a defined term) from the Convention Area without first obtaining a permit from the Minister of Fisheries.

*Clause 5* provides for the granting of permits and for the attachment of conditions to permits.

*Clause 6* requires a register of permits to be kept.

*Clause 7* imposes a fine of up to \$10,000 and the forfeiture of any boat or gear upon conviction of the offence of taking marine organisms contrary to the provisions of the Bill.

*Clause 8* provides for the appointment of Inspectors.

*Clause 9* sets out the powers of search of Inspectors.

*Clause 10* protects the Crown and certain persons from proceedings.

*Clause 11* authorises the Minister to co-operate with any government, organisation, or person in carrying out certain matters relating to marine organisms.

*Clause 12* authorises the Minister to give evidentiary certificates.

*Clause 13* relates to offences and penalties.

*Clause 14* provides for certain defences in answer to a charge brought under the Bill.

*Clause 15* provides for the recoupment of expenses incurred by an Inspector.

*Clause 16* provides that the Bill is not to derogate from the enactments specified in the clause.

*Clause 17* is the regulation-making provision.

The *Schedule* sets out the English text of the Convention.

---

*Right Hon. Mr Talboys*

## ANTARCTIC MARINE LIVING RESOURCES

### ANALYSIS

Title	9. Powers of search
1. Short Title, commencement, and application	10. Inspectors, etc., protected from proceedings
2. Interpretation	11. Programmes, etc., relating to marine organisms
3. Act to bind the Crown	12. Evidentiary certificates
4. Restrictions on taking marine organisms	13. Offences and penalties
5. Permits	14. Defences in respect of certain offences
6. Register of permits	15. Liability for causing Inspector to incur expense
7. Offence to take marine organism without permit	16. No derogation from certain enactments
8. Inspectors and Special Inspectors	17. Regulations Schedule

### A BILL INTITULED

#### **An Act to give effect to the Convention on the Conservation of Antarctic Marine Living Resources**

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title, commencement, and application**—(1) This Act may be cited as the Antarctic Marine Living Resources Act 1981.
- 10 (2) This Act shall come into force on the 1st day of January 1982.
- (3) The provisions of this Act shall apply in respect of—
- 15 (a) Any matter or thing done, to be done, or omitted to be done within New Zealand or New Zealand fisheries waters:
- (b) Any act or omission occurring on any New Zealand ship or aircraft, or by any New Zealand citizen, wherever that ship or aircraft or person may be.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

“Another Contracting Party” means a contracting party 5  
to the Convention other than New Zealand:

“Antarctic Convergence” has the meaning given to it by Article I of the Convention:

“Conservation measures” means measures for the conservation of Antarctic marine living resources that are 10  
adopted from time to time by the Commission for the Conservation of Antarctic Marine Living Resources under Article IX of the Convention:

“Convention” means the Convention on the Conservation of Antarctic Marine Living Resources that was 15  
opened for signature at Canberra on 1 August 1980, a copy of the English text of which is set out in the First Schedule to this Act:

“Convention Area” means the area south of the Antarctic Convergence: 20

“Hovercraft” has the same meaning as in the Hovercraft Act 1971:

“Inspector of Sea Fishing” means any person appointed or declared to have been appointed as such under section 4 of the Fisheries Act 1908:

“Marine organism” means any organism in the Convention Area that belongs to any species of living 25  
organisms that are found in the Convention Area:

“Minister” means the Minister of Fisheries; and includes any person authorised by the Minister to exercise all or any of his powers under this Act: 30

“New Zealand” includes the Ross Dependency:

“New Zealand fisheries waters” has the same meaning as in section 2 (1) of the Fisheries Act 1908:

“New Zealand ship” has the same meaning as in the Shipping and Seamen Act 1952: 35

“Permit” means a permit issued under this Act:

“Take” includes—

(a) To take, catch, kill, injure, attract, poison, tranquilise, herd, harass, disturb, or possess: 40

(b) To brand, tag, mark, or do any similar thing:

(c) To attempt to do any act specified in paragraph (a) or paragraph (b) of this definition:

5 “Vessel” means any ship, boat, steamer, lighter, launch, raft, barge, punt, or ferry boat; and includes every description of vessel, whether used in navigation or in any way kept or used as a hulk or storeship or for any other purpose.

(2) Terms and expressions used in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

**3. Act to bind the Crown**—This Act shall bind the Crown.

10 **4. Restrictions on taking marine organisms**—Subject to this Act, no person shall in the Convention Area take any marine organism, whether alive or dead, without first obtaining a permit to do so from the Minister.

15 **5. Permits**—(1) Subject to this section, upon application made to the Minister in writing, accompanied by the prescribed fee (if any), the Minister may grant to a person a permit in writing authorising the person to take marine organisms of a specified kind or kinds in, or in a specified part of, the Convention Area.

20 (2) In considering any application for a permit, the Minister shall have regard to—

(a) The need to conserve marine organisms in accordance with the Convention:

(b) The object and principles of the Convention:

25 (3) The Minister may attach to any permit such conditions as he thinks fit, including conditions relating to—

(a) The taking of marine organisms solely for the purposes of research:

30 (b) The designation of the quantity of any species of marine organisms which may be taken in the Convention Area:

(c) The designation of regions and subregions in the Convention Area:

35 (d) The designation of the quantity of any species of marine organisms which may be taken from the populations of regions and subregions:

(e) The designation of protected species of marine organisms:

40 (f) The designation of the size, age, and, as appropriate, sex of the species of marine organisms which may be taken:

(g) The designation of open and closed seasons for taking marine organisms:

- (h) The designation of the opening and closing of areas, regions or subregions for purposes of scientific study or conservation, including special areas for protection and scientific study:
- (i) The regulation of the effort employed and methods of taking (including the vessels, gear, and equipment to be used) : 5
- (j) The implementation of any system or interim arrangement relating to observation and inspection established under Article XXIV of the Convention: 10
- (k) The taking of any other conservation measures:
- (1) The records that are to be kept and the data that is to be collected by the permit holder in relation to activities conducted under the permit, and any information which is to be supplied to the Minister. 15
- (4) Any permit may be revoked or suspended, and the conditions attached to it amended, at any time by the Minister.
- (5) No permit shall be transferred to any other person except with the consent in writing of the Minister. 20
- (6) The decision of the Minister as to whether or not to grant a permit, to impose or amend the conditions attached to a permit, or to revoke, suspend, or transfer a permit under this section shall be final.

**6. Register of permits—**(1) The Minister shall cause to be kept, in such manner and at such place or places as he directs, a register of permits in force from time to time, showing the purpose for which the permit was granted and the conditions (if any) to which each permit is from time to time subject, and such other matters relating to each permit as the Minister thinks fit. 30

(2) The register shall be open to the public, and shall be available for inspection during ordinary office hours on payment of the prescribed fee (if any).

**7. Offence to take marine organism without permit—** 35

(1) Subject to subsection (2) of this section, every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$10,000 who, in the Convention Area, takes any marine organism otherwise than under or pursuant to this Act or a permit. 40

(2) No offence is committed against this Act by reason of any act or omission by a person—

- (a) To the extent that the act or omission is authorised under or pursuant to any enactment other than this Act; or 45

(b) In the case of an act or omission by any person who is not a New Zealand citizen (otherwise than on board a New Zealand ship or aircraft), to the extent that the act or omission is authorised, whether expressly or impliedly, by another Contracting Party.

(3) Upon the conviction of any person for an offence against subsection (1) of this section, any marine organism unlawfully taken, and all vessels, vehicles, aircraft, hovercraft, gear, nets, tackle, equipment, and apparatus used in respect of the commission of the offence shall be forfeit to the Crown, and shall be disposed of as the Minister thinks fit.

**8. Inspectors and Special Inspectors**—(1) Every Inspector of Sea Fishing, and every constable, shall be an Inspector for the purposes of this Act.

(2) For the purposes of this Act, the Minister may from time to time appoint any person to be an Inspector or, upon the nomination of the Commission for the Conservation of Antarctic Marine Living Resources (as established under Article VII of the Convention), to be a Special Inspector. Such Inspectors or Special Inspectors shall be appointed on such terms and conditions as may be approved by the Minister; but if any person so appointed is a full-time officer or employee of the State services he shall not be entitled to any additional remuneration in respect of his appointment under this subsection.

(3) Every person appointed under subsection (2) of this section shall be appointed for such term as the Minister thinks fit, and may be reappointed.

(4) Any person appointed under subsection (2) of this section may at any time have his appointment terminated at the discretion of the Minister, or may at any time resign his office by writing addressed to the Minister.

(5) Any person appointed under subsection (2) of this section shall, on the expiration of the term of his appointment, or on the sooner expiry of his appointment by removal from office or resignation, surrender to the Minister his warrant of appointment.

(6) No person appointed under subsection (2) of this section shall, by virtue of that appointment, be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956.

(7) Every person declared to be an Inspector under subsection (1) of this section shall have and may exercise, in respect of supervising, administering, and enforcing the provisions of this Act, all the powers that an Inspector of Sea Fishing has in relation to supervising, administering, and enforcing the provisions of Part I and Part III of the Fisheries Act 1908. 5

(8) Every Inspector or Special Inspector appointed under subsection (2) of this section shall have such duties and may exercise such powers in relation to marine organisms as the Minister may direct, being powers of no greater extent than those exercised by a fishery officer pursuant to the Fisheries Act 1908. 10

(9) Every Inspector (except a constable) shall be issued with a warrant showing the Inspector's authority to exercise any powers conferred on him pursuant to this section. 15

(10) The production by any Inspector of any warrant issued under this section or section 4 of the Fisheries Act 1908 or any evidence that the Inspector is a constable shall, until the contrary is proved, be sufficient authority for any such Inspector to do anything authorised by subsection (7) or subsection (8) of this section. 20

**9. Powers of search**—(1) Subject to this Act and notwithstanding anything to the contrary in the Fisheries Act 1908, every Inspector who has reason to believe or suspect that a breach of this Act or of any regulation made under it has been or is being committed, may stop, enter, inspect, and examine any vehicle, vessel, aircraft, or hovercraft. 25

(2) An Inspector shall not enter, inspect, or examine any aircraft or hovercraft unless he is accompanied by the pilot in command, or the owner, or a representative or agent of the owner, of the aircraft or hovercraft. 30

(3) An Inspector shall, before entering on any vehicle, vessel, aircraft, or hovercraft, produce his warrant of appointment or other evidence that he is an Inspector if asked to do so by the person in actual charge of the vehicle, vessel, aircraft, or hovercraft. 35

(4) Every Inspector may, in the course of any search under this section, open (by force if necessary) any container, package, or receptacle, or seize and take away anything which he has reason to believe will be evidence of a breach of the provisions of this Act or of any regulation made under it. 40

(5) Every person in or about any vehicle or vessel inspected under the provisions of this Act, and the pilot in command and the owner and every agent or representative of the owner of any aircraft or hovercraft so inspected, shall—

- 5 (a) Facilitate the entry, inspection, and examination by an Inspector:  
(b) Facilitate the removal of any container, package, receptacle, or thing.

10 **10. Inspectors, etc., protected from proceedings**—No action or proceedings shall be brought against the Crown, or any Inspector, or any person acting under the instructions of an Inspector, in respect of any thing done or undertaken for the purpose of carrying out the provisions of this Act or any regulations made under it where the Crown or those persons have  
15 acted in good faith and with reasonable care.

**11. Programmes, etc., relating to marine organisms**—The Minister may make arrangements for, or co-operate with any government, organisation, or person in—

- 20 (a) The formulation and implementation of programmes; and  
(b) The carrying out of research; and  
(c) The dissemination of information—  
relating to the conservation of marine organisms.

25 **12. Evidentiary certificates**—(1) The Minister may give a certificate stating—

- (a) That, at a time specified in the certificate, a vessel specified in the certificate was, or was not, a New Zealand ship:  
30 (b) That an area specified in the certificate is in the Convention Area, or is in a part of the Convention Area:  
(c) That, at a time specified in the certificate, an area specified in the certificate was part of New Zealand fisheries waters:  
35 (d) That, at a time specified in the certificate, a person specified in the certificate was, or was not, the holder of a permit authorising the person, in the Convention Area, or in that part of the Convention Area specified in the certificate, to take marine organisms of a kind or kinds specified in the certificate.

40 (2) A person giving a certificate under paragraph (1) (d) of this section that a person was, at a time specified in the certificate, the holder of a permit may, in the certificate,

certify that the conditions specified in the certificate were the conditions to which the permit was subject at the time so specified.

(3) In any proceedings for an offence against this Act, a certificate given under this section is prima facie evidence of the matters specified in the certificate. 5

(4) For the purposes of this section, a writing purporting to be a certificate under this section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given. 10

**13. Offences and penalties—**(1) Every person commits an offence against this Act who—

- (a) Acts in contravention of or fails to comply in any respect with any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act or any regulations made under it; or 15
- (b) Wilfully makes any false or misleading statement or any material omission in any communication with or application or return to the Minister, or to any duly authorised officer performing his functions in pursuance of this Act (including any Inspector or Special Inspector); or 20
- (c) Refuses or fails to furnish any return or information or particulars required by the Minister, or any duly authorised officer performing his functions in pursuance of this Act (including any Inspector or Special Inspector). 25

(2) Every person commits an offence against this Act who, except under the authority of any enactment, places or leaves any structure or trap or chemical or other substance in any place where a marine organism is or is likely to be and which injures or harms, or is likely to injure or harm, any marine organism. 30

(3) Every person who commits an offence against this Act for which no penalty is provided otherwise than in this section is liable on summary conviction to a fine not exceeding— 35

- (a) In the case of an offence against subsection (2) of this section, \$5,000; and
- (b) In any other case, \$1,000.

**14. Defences in respect of certain offences—**Where any person is charged with any offence under this Act, it shall be a defence to the charge if the defendant proves— 40

- (a) That the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life:
- 5 (b) Where paragraph (a) of this section does not apply and the act or omission was done by the holder of a permit, that the act or omission was unavoidable in the course of taking action in accordance with the permit or was reasonably necessary to avoid damage to equipment used in taking action in accordance with the permit.
- 10

15 **15. Liability for causing Inspector to incur expense**—Where any person causes an Inspector to incur any expense that he would not otherwise have incurred, by failing to comply with or acting in contravention of any provision of this Act or any regulations made under it, or by failing to comply with or acting in contravention of any order or direction or requirement or conditions reasonably and properly given or imposed in accordance with this Act or any such regulations, that  
20 person shall, upon conviction, reimburse the Crown for the amount of any such expense that is, in the opinion of the convicting Court, reasonably and properly incurred, and that amount shall be recoverable from that person in like manner as a fine.

25 **16. No derogation from certain enactments**—Nothing in this Act shall derogate from the provisions of—

- (a) The Territorial Sea and Exclusive Economic Zone Act 1977:
- (b) The Marine Mammals Protection Act 1978:
- 30 (c) Regulations made under the Antarctica Act 1960 relating to Antarctic flora and fauna:
- (d) The Ross Dependency Whaling Regulations, 1929, as published in the *Gazette* on the 31st day of October 1929 at pages 2747 and 2748.

35 **17. Regulations**—The Governor-General may, from time to time by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for functions and powers to be conferred, and duties to be imposed, upon Inspectors and Special  
40 Inspectors:
- (b) Prescribing forms of applications and of permits required for the purposes of this Act:

- (c) Prescribing the amount of any deposit or fees to be paid in respect of any application made under this Act, and in respect of the granting of any permit:
  - (d) Giving effect to the terms of any international agreement to which New Zealand is a party: 5
  - (e) Giving effect to any conservation measures and to any proposals for the conduct of international and national programmes of research formulated by the Scientific Committee for the Conservation of Antarctic Marine Living Resources established under the Convention: 10
  - (f) Providing for the implementation of any system or interim arrangement relating to observation and inspection established under Article XXIV of the Convention: 15
  - (g) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
-

SCHEDULE

Section 2

**CONVENTION ON THE CONSERVATION OF ANTARCTIC  
MARINE LIVING RESOURCES**

The Contracting Parties,

*Recognising* the importance of safeguarding the environment and protecting the integrity of the ecosystem of the seas surrounding Antarctica;

*Noting* the concentration of marine living resources found in Antarctic waters and the increased interest in the possibilities offered by the utilization of these resources as a source of protein;

*Conscious* of the urgency of ensuring the conservation of Antarctic marine living resources;

*Considering* that it is essential to increase knowledge of the Antarctic marine ecosystem and its components so as to be able to base decisions on harvesting on sound scientific information;

*Believing* that the conservation of Antarctic marine living resources calls for international co-operation with due regard for the provisions of the Antarctic Treaty and with the active involvement of all States engaged in research or harvesting activities in Antarctic waters;

*Recognising* the prime responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the Antarctic environment and, in particular, their responsibilities under Article IX, paragraph 1 (f) of the Antarctic Treaty in respect of the preservation and conservation of living resources in Antarctica;

*Recalling* the action already taken by the Antarctic Treaty Consultative Parties including in particular the Agreed Measures for the Conservation of Antarctic Fauna and Flora, as well as the provisions of the Convention for the Conservation of Antarctic Seals;

*Bearing* in mind the concern regarding the conservation of Antarctic marine living resources expressed by the Consultative Parties at the Ninth Consultative Meeting of the Antarctic Treaty and the importance of the provisions of Recommendation IX-2 which led to the establishment of the present Convention;

*Believing* that it is in the interest of all mankind to preserve the waters surrounding the Antarctic continent for peaceful purposes only and to prevent their becoming the scene or object of international discord;

*Recognising*, in the light of the foregoing, that it is desirable to establish suitable machinery for recommending, promoting, deciding upon and co-ordinating the measures and scientific studies needed to ensure the conservation of Antarctic marine living organisms;

*Have agreed* as follows:

ARTICLE 1

1. This Convention applies to the Antarctic marine living resources of the area south of 60° South latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem.

2. Antarctic marine living resources means the populations of fin fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

3. The Antarctic marine ecosystem means the complex of relationships of Antarctic marine living resources with each other and with their physical environment.

4. The Antarctic Convergence shall be deemed to be a line joining the following points along parallels of latitude and meridians of longitude:

50° S, 0°; 50° S, 30° E; 45° S, 30° E; 45° S, 80° E; 55° S, 80° E;  
55° S, 150° E; 60° S, 150° E; 60° S, 50° W; 50° S, 50° W;  
50° S, 0°.

#### ARTICLE II

1. The objective of this Convention is the conservation of Antarctic marine living resources.

2. For the purposes of this Convention, the term "conservation" includes rational use.

3. Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:

- (a) prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;
- (b) maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in sub-paragraph (a) above;  
and
- (c) prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

#### ARTICLE III

The Contracting Parties, whether or not they are Parties to the Antarctic Treaty, agree that they will not engage in any activities in the Antarctic Treaty area contrary to the principles and purposes of that Treaty and that, in their relations with each other, they are bound by the obligations contained in Articles I and V of the Antarctic Treaty.

#### ARTICLE IV

1. With respect to the Antarctic Treaty area, all Contracting Parties, whether or not they are Parties to the Antarctic Treaty, are bound by Articles IV and VI of the Antarctic Treaty in their relations with each other.

2. Nothing in this Convention and no acts or activities taking place while the present Convention is in force shall:

- (a) constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;
- (b) be interpreted as a renunciation or diminution by any Contracting Party of, or as prejudicing, any right or claim or basis of claim to exercise coastal state jurisdiction under international law within the area to which this Convention applies;
- (c) be interpreted as prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any such right, claim or basis of claim;
- (d) affect the provision of Article IV, paragraph 2, of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.

#### ARTICLE V

1. The Contracting Parties which are not Parties to the Antarctic Treaty acknowledge the special obligations and responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the environment of the Antarctic Treaty area.

2. The Contracting Parties which are not Parties to the Antarctic Treaty agree that, in their activities in the Antarctic Treaty area, they will observe as and when appropriate the Agreed Measures for the Conservation of Antarctic Fauna and Flora and such other measures as have been recommended by the Antarctic Treaty Consultative Parties in fulfilment of their responsibility for the protection of the Antarctic environment from all forms of harmful human interference.

3. For the purposes of this Convention, "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty whose Representatives participate in meetings under Article IX of the Antarctic Treaty.

#### ARTICLE VI

Nothing in this Convention shall derogate from the rights and obligations of Contracting Parties under the International Convention for the Regulation of Whaling and the Convention for the Conservation of Antarctic Seals.

#### ARTICLE VII

1. The Contracting Parties hereby establish and agree to maintain the Commission for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as "the Commission").

2. Membership in the Commission shall be as follows:

- (a) each Contracting Party which participated in the meeting at which this Convention was adopted shall be a Member of the Commission;
- (b) each State Party which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as that acceding party is engaged in research or harvesting activities in relation to the marine living resources to which this Convention applies;

- (c) each regional economic integration organization which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as its States members are so entitled;
- (d) a Contracting Party seeking to participate in the work of the Commission pursuant to sub-paragraphs (b) and (c) above shall notify the Depositary of the basis upon which it seeks to become a Member of the Commission and of its willingness to accept conservation measures in force. The Depositary shall communicate to each Member of the Commission such notification and accompanying information. Within 2 months of receipt of such communication from the Depositary, any Member of the Commission may request that a special meeting of the Commission be held to consider the matter. Upon receipt of such request, the Depositary shall call such a meeting. If there is no request for a meeting, the Contracting Party submitting the notification shall be deemed to have satisfied the requirements for Commission Membership.

3. Each Member of the Commission shall be represented by one representative who may be accompanied by alternate representatives and advisers.

#### ARTICLE VIII

The Commission shall have legal personality and shall enjoy in the territory of each of the States Parties such legal capacity as may be necessary to perform its function and achieve the purposes of this Convention. The privileges and immunities to be enjoyed by the Commission and its staff in the territory of a State Party shall be determined by agreement between the Commission and the State Party concerned.

#### ARTICLE IX

1. The function of the Commission shall be to give effect to the objective and principles set out in Article II of this Convention. To this end, it shall:

- (a) facilitate research into and comprehensive studies of Antarctic marine living resources and of the Antarctic marine ecosystem;
- (b) compile data on the status of and changes in population of Antarctic marine living resources and on factors affecting the distribution, abundance and productivity of harvested species and dependent or related species or populations;
- (c) ensure the acquisition of catch and effort statistics on harvested populations;
- (d) analyse, disseminate and publish the information referred to in sub-paragraphs (b) and (c) above and the reports of the Scientific Committee;
- (e) identify conservation needs and analyse the effectiveness of conservation measures;
- (f) formulate, adopt and revise conservation measures on the basis of the best scientific evidence available, subject to the provisions of paragraph 5 of this Article;
- (g) implement the system of observation and inspection established under Article XXIV of this Convention;

(h) carry out such other activities as are necessary to fulfil the objective of this Convention.

2. The conservation measures referred to in paragraph 1 (f) above include the following:

- (a) the designation of the quantity of any species which may be harvested in the area to which this Convention applies;
- (b) the designation of regions and sub-regions based on the distribution of populations of Antarctic marine living resources;
- (c) the designation of the quantity which may be harvested from the populations of regions and sub-regions;
- (d) the designation of protected species;
- (e) the designation of the size, age and, as appropriate, sex of species which may be harvested;
- (f) the designation of open and closed seasons for harvesting;
- (g) the designation of the opening and closing of areas, regions or sub-regions for purposes of scientific study or conservation, including special areas for protection and scientific study;
- (h) regulation of the effort employed and methods of harvesting, including fishing gear, with a view, inter alia, to avoiding undue concentration of harvesting in any region or sub-region;
- (i) the taking of such other conservation measures as the Commission considers necessary for the fulfilment of the objective of this Convention, including measures concerning the effects of harvesting and associated activities on components of the marine ecosystem other than the harvested populations.

3. The Commission shall publish and maintain a record of all conservation measures in force.

4. In exercising its functions under paragraph 1 above, the Commission shall take full account of the recommendations and advice of the Scientific Committee.

5. The Commission shall take full account of any relevant measures or regulations established or recommended by the Consultative Meetings pursuant to Article IX of the Antarctic Treaty or by existing fisheries commissions responsible for species which may enter the area to which this Convention applies, in order that there shall be no inconsistency between the rights and obligations of a Contracting Party under such regulations or measures and conservation measures which may be adopted by the Commission.

6. Conservation measures adopted by the Commission in accordance with this Convention shall be implemented by Members of the Commission in the following manner:

- (a) the Commission shall notify conservation measures to all Members of the Commission;
- (b) conservation measures shall become binding upon all Members of the Commission 180 days after such notification, except as provided in sub-paragraphs (c) and (d) below;
- (c) if a Member of the Commission, within 90 days following the notification specified in sub-paragraph (a), notifies the Commission that it is unable to accept the conservation measure, in whole or in part, the measure shall not, to the extent stated, be binding upon that Member of the Commission;

- (d) in the event that any Member of the Commission invokes the procedure set forth in sub-paragraph (c) above, the Commission shall meet at the request of any Member of the Commission to review the conservation measure. At the time of such meeting and within 30 days following the meeting, any Member of the Commission shall have the right to declare that it is no longer able to accept the conservation measure, in which case the Member shall no longer be bound by such measure.

#### ARTICLE X

1. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by its nationals or vessels which, in the opinion of the Commission, affects the implementation of the objective of this Convention.

2. The Commission shall draw the attention of all Contracting Parties to any activity which, in the opinion of the Commission, affects the implementation by a Contracting Party of the objective of this Convention or the compliance by that Contracting Party with its obligations under this Convention.

#### ARTICLE XI

The Commission shall seek to co-operate with Contracting Parties which may exercise jurisdiction in marine areas adjacent to the area to which this Convention applies in respect of the conservation of any stock or stocks of associated species which occur both within those areas and the area to which this Convention applies, with a view to harmonizing the conservation measures adopted in respect of such stocks.

#### ARTICLE XII

1. Decisions of the Commission on matters of substance shall be taken by consensus. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 above shall be taken by a simple majority of the Members of the Commission present and voting.

3. In Commission consideration of any item requiring a decision, it shall be made clear whether a regional economic integration organization will participate in the taking of the decision and, if so, whether any of its member States will also participate. The number of Contracting Parties so participating shall not exceed the number of member States of the regional economic integration organization which are Members of the Commission.

4. In the taking of decisions pursuant to this Article, a regional economic integration organization shall have only one vote.

#### ARTICLE XIII

1. The headquarters of the Commission shall be established at Hobart, Tasmania, Australia.

2. The Commission shall hold a regular annual meeting. Other meetings shall also be held at the request of one-third of its members and as otherwise provided in this Convention. The first meeting of the Com-

mission shall be held within 3 months of the entry into force of this Convention, provided that among the Contracting Parties there are at least 2 States conducting harvesting activities within the area to which this Convention applies. The first meeting shall, in any event, be held within one year of the entry into force of this Convention. The Depositary shall consult with the signatory States regarding the first Commission meeting, taking into account that a broad representation of such States is necessary for the effective operation of the Commission.

3. The Depositary shall convene the first meeting of the Commission at the headquarters of the Commission. Thereafter, meetings of the Commission shall be held at its headquarters, unless it decides otherwise.

4. The Commission shall elect from among its members a Chairman and Vice-Chairman, each of whom shall serve for a term of 2 years and shall be eligible for re-election for one additional term. The first Chairman shall, however, be elected for an initial term of 3 years. The Chairman and Vice-Chairman shall not be representatives of the same Contracting Party.

5. The Commission shall adopt and amend as necessary the rules of procedure for the conduct of its meetings, except with respect to the matters dealt with in Article XII of this Convention.

6. The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

#### ARTICLE XIV

1. The Contracting Parties hereby establish the Scientific Committee for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as "the Scientific Committee") which shall be a consultative body to the Commission. The Scientific Committee shall normally meet at the headquarters of the Commission unless the Scientific Committee decides otherwise.

2. Each Member of the Commission shall be a member of the Scientific Committee and shall appoint a representative with suitable scientific qualifications who may be accompanied by other experts and advisers.

3. The Scientific Committee may seek the advice of other scientists and experts as may be required on an ad hoc basis.

#### ARTICLE XV

1. The Scientific Committee shall provide a forum for consultation and co-operation concerning the collection, study and exchange of information with respect to the marine living resources to which this Convention applies. It shall encourage and promote co-operation in the field of scientific research in order to extend knowledge of the marine living resources of the Antarctic marine ecosystem.

2. The Scientific Committee shall conduct such activities as the Commission may direct in pursuance of the objective of this Convention and shall:

- (a) establish criteria and methods to be used for determinations concerning the conservation measures referred to in Article IX of this Convention;
- (b) regularly assess the status and trends of the populations of Antarctic marine living resources;

- (c) analyse data concerning the direct and indirect effects of harvesting on the populations of Antarctic marine living resources;
- (d) assess the effects of proposed changes in the methods or levels of harvesting and proposed conservation measures;
- (e) transmit assessments, analyses, reports and recommendations to the Commission as requested or on its own initiative regarding measures and research to implement the objective of this Convention;
- (f) formulate proposals for the conduct of international and national programs of research into Antarctic marine living resources.

3. In carrying out its functions, the Scientific Committee shall have regard to the work of other relevant technical and scientific organizations and to the scientific activities conducted within the framework of the Antarctic Treaty.

#### ARTICLE XVI

1. The first meeting of the Scientific Committee shall be held within 3 months of the first meeting of the Commission. The Scientific Committee shall meet thereafter as often as may be necessary to fulfil its functions.

2. The Scientific Committee shall adopt and amend as necessary its rules of procedure. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.

3. The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

#### ARTICLE XVII

1. The Commission shall appoint an Executive Secretary to serve the Commission and Scientific Committee according to such procedures and on such terms and conditions as the Commission may determine. His term of office shall be for 4 years and he shall be eligible for reappointment.

2. The Commission shall authorize such staff establishment for the Secretariat as may be necessary and the Executive Secretary shall appoint, direct and supervise such staff according to such rules and procedures and on such terms and conditions as the Commission may determine.

3. The Executive Secretary and Secretariat shall perform the functions entrusted to them by the Commission.

#### ARTICLE XVIII

The official languages of the Commission and of the Scientific Committee shall be English, French, Russian and Spanish.

#### ARTICLE XIX

1. At each annual meeting, the Commission shall adopt by consensus its budget and the budget of the Scientific Committee.

2. A draft budget for the Commission and the Scientific Committee and any subsidiary bodies shall be prepared by the Executive Secretary and submitted to the Members of the Commission at least 60 days before the annual meeting of the Commission.

3. Each Member of the Commission shall contribute to the budget. Until the expiration of 5 years after the entry into force of this Convention, the contribution of each Member of the Commission shall be equal. Thereafter the contribution shall be determined in accordance with 2 criteria: the amount harvested and an equal sharing among all Members of the Commission. The Commission shall determine by consensus the proportion in which these 2 criteria shall apply.

4. The financial activities of the Commission and Scientific Committee shall be conducted in accordance with financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.

5. Each Member of the Commission shall meet its own expenses arising from attendance at meetings of the Commission and of the Scientific Committee.

6. A Member of the Commission that fails to pay its contributions for 2 consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions in the Commission.

#### ARTICLE XX

1. The Members of the Commission shall, to the greatest extent possible, provide annually to the Commission and to the Scientific Committee such statistical, biological and other data and information as the Commission and Scientific Committee may require in the exercise of their functions.

2. The Members of the Commission shall provide, in the manner and at such intervals as may be prescribed, information about their harvesting activities, including fishing areas and vessels, so as to enable reliable catch and effort statistics to be compiled.

3. The Members of the Commission shall provide to the Commission at such intervals as may be prescribed information on steps taken to implement the conservation measures adopted by the Commission.

4. The Members of the Commission agree that in any of their harvesting activities, advantage shall be taken of opportunities to collect data needed to assess the impact of harvesting.

#### ARTICLE XXI

1. Each Contracting Party shall take appropriate measures within its competence to ensure compliance with the provisions of this Convention and with conservation measures adopted by the Commission to which the Party is bound in accordance with Article IX of this Convention.

2. Each Contracting Party shall transmit to the Commission information on measures taken pursuant to paragraph 1 above, including the imposition of sanctions for any violation.

#### ARTICLE XXII

1. Each Contracting Party undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to the objective of this Convention.

2. Each Contracting Party shall notify the Commission of any such activity which comes to its attention.

## ARTICLE XXIII

1. The Commission and the Scientific Committee shall co-operate with the Antarctic Treaty Consultative Parties on matters falling within the competence of the latter.

2. The Commission and the Scientific Committee shall co-operate, as appropriate, with the Food and Agriculture Organisation of the United Nations and with other Specialised Agencies.

3. The Commission and the Scientific Committee shall seek to develop co-operative working relationships, as appropriate, with inter-governmental and non-governmental organizations which could contribute to their work, including the Scientific Committee on Antarctic Research, the Scientific Committee on Oceanic Research and the International Whaling Commission.

4. The Commission may enter into agreements with the organizations referred to in this Article and with other organizations as may be appropriate. The Commission and the Scientific Committee may invite such organizations to send observers to their meetings and to meetings of their subsidiary bodies.

## ARTICLE XXIV

1. In order to promote the objective and ensure observance of the provisions of this Convention, the Contracting Parties agree that a system of observation and inspection shall be established.

2. The system of observation and inspection shall be elaborated by the Commission on the basis of the following principles:

- (a) Contracting Parties shall co-operate with each other to ensure the effective implementation of the system of observation and inspection, taking account of the existing international practice. This system shall include, *inter alia*, procedures for boarding and inspection by observers and inspectors designated by the Members of the Commission and procedures for flag state prosecution and sanctions on the basis of evidence resulting from such boarding and inspections. A report of such prosecutions and sanctions imposed shall be included in the information referred to in Article XXI of this Convention;
- (b) in order to verify compliance with measures adopted under this Convention, observation and inspection shall be carried out on board vessels engaged in scientific research or harvesting of marine living resources in the area to which this Convention applies, through observers and inspectors designated by the Members of the Commission and operating under terms and conditions to be established by the Commission;
- (c) designated observers and inspectors shall remain subject to the jurisdiction of the Contracting Party of which they are nationals. They shall report to the Member of the Commission by which they have been designated which in turn shall report to the Commission.

3. Pending the establishment of the system of observation and inspection, the Members of the Commission shall seek to establish interim arrangements to designate observers and inspectors and such designated observers and inspectors shall be entitled to carry out inspections in accordance with the principles set out in paragraph 2 above.

ARTICLE XXV

1. If any dispute arises between 2 or more of the Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent in each case of all Parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court or to arbitration shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.

3. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention.

ARTICLE XXVI

1. This Convention shall be open for signature at Canberra from 1 August to 31 December 1980 by the States participating in the Conference on the Conservation of Antarctic Marine Living Resources held at Canberra from 7 to 20 May 1980.

2. The States which so sign will be the original signatory States of the Convention.

ARTICLE XXVII

1. This Convention is subject to ratification, acceptance or approval by signatory States.

2. Instruments of ratification, acceptance or approval shall be deposited with the Government of Australia, hereby designated as the Depositary.

ARTICLE XXVIII

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the eighth instrument of ratification, acceptance or approval by States referred to in paragraph 1 of Article XXVI of this Convention.

2. With respect to each State or regional economic integration organization which subsequent to the date of entry into force of this Convention deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

ARTICLE XXIX

1. This Convention shall be open for accession by any State interested in research or harvesting activities in relation to the marine living resources to which this Convention applies.

2. This Convention shall be open for accession by regional economic integration organizations constituted by sovereign States which include among their members one or more States Members of the Commission and to which the States members of the organization have transferred,

in whole or in part, competences with regard to the matters covered by this Convention. The accession of such regional economic integration organizations shall be the subject of consultations among Members of the Commission.

#### ARTICLE XXX

1. This Convention may be amended at any time.
2. If one-third of the Members of the Commission request a meeting to discuss a proposed amendment the Depositary shall call such a meeting.
3. An amendment shall enter into force when the Depositary has received instruments of ratification, acceptance or approval thereof from all the Members of the Commission.
4. Such amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification, acceptance or approval by it has been received by the Depositary. Any such Contracting Party from which no such notice has been received within a period of one year from the date of entry into force of the amendment in accordance with paragraph 3 above shall be deemed to have withdrawn from this Convention.

#### ARTICLE XXXI

1. Any Contracting Party may withdraw from this Convention on 30 June of any year, by giving written notice not later than 1 January of the same year to the Depositary, which, upon receipt of such a notice, shall communicate it forthwith to the other Contracting Parties.
2. Any other Contracting Party may, within 60 days of the receipt of a copy of such a notice from the Depositary, give written notice of withdrawal to the Depositary in which case the Convention shall cease to be in force on 30 June of the same year with respect to the Contracting Party giving such notice.
3. Withdrawal from this Convention by any Member of the Commission shall not affect its financial obligations under this Convention.

#### ARTICLE XXXII

- The Depositary shall notify all Contracting Parties of the following:
- (a) signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession;
  - (b) the date of entry into force of this Convention and of any amendment thereto.

#### ARTICLE XXXIII

1. This Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Government of Australia which shall transmit duly certified copies thereof to all signatory and acceding Parties.
2. This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Drawn up at Canberra this twentieth day of May 1980.  
IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Convention.

ANNEX FOR AN ARBITRAL TRIBUNAL

The arbitral tribunal referred to in paragraph 3 of Article XXV shall be composed of 3 arbitrators who shall be appointed as follows:

The Party commencing proceedings shall communicate the name of an arbitrator to the other Party which, in turn, within a period of 40 days following such notification, shall communicate the name of the second arbitrator. The Parties shall, within a period of 60 days following the appointment of the second arbitrator, appoint the third arbitrator, who shall not be a national of either Party and shall not be of the same nationality as either of the first 2 arbitrators. The third arbitrator shall preside over the tribunal.

If the second arbitrator has not been appointed within the prescribed period, or if the Parties have not reached agreement within the prescribed period on the appointment of the third arbitrator, that arbitrator shall be appointed, at the request of either Party, by the Secretary-General of the Permanent Court of Arbitration, from among persons of international standing not having the nationality of a State which is a Party to this Convention.

The arbitral tribunal shall decide where its headquarters will be located and shall adopt its own rules of procedure.

The award of the arbitral tribunal shall be made by a majority of its members, who may not abstain from voting.

Any Contracting Party which is not a Party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.

The award of the arbitral tribunal shall be final and binding on all Parties to the dispute and on any Party which intervenes in the proceedings and shall be complied with without delay. The arbitral tribunal shall interpret the award at the request of one of the Parties to the dispute or of any intervening Party.

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.