

No. 31155

MULTILATERAL

**Convention for the conservation of southern bluefin tuna
(with annex). Signed at Canberra on 10 May 1993**

Authentic texts: English and Japanese.

Registered by Australia on 18 August 1994.

MULTILATÉRAL

**Convention relative à la préservation du thon rouge du sud
(avec annexe). Signée à Canberra le 10 mai 1993**

Textes authentiques : anglais et japonais.

Enregistrée par l'Australie le 18 août 1994.

CONVENTION¹ FOR THE CONSERVATION OF SOUTHERN BLUE-FIN TUNA

The Parties to this Convention:

Considering their mutual interest in southern bluefin tuna;

Recalling that Australia, Japan and New Zealand have already taken certain measures for the conservation and management of southern bluefin tuna;

Paying due regard to the rights and obligations of the Parties under relevant principles of international law;

Noting the adoption of the United Nations Convention on the Law of the Sea in 1982;²

Noting that States have established exclusive economic or fishery zones within which they exercise, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploring and exploiting, conserving and managing the living resources;

Recognising that southern bluefin tuna is a highly migratory species which migrates through such zones;

Noting that the coastal States through whose exclusive economic or fishery zones southern bluefin tuna migrates exercise sovereign rights within such zones for the purpose of exploring and exploiting, conserving and managing the living resources including southern bluefin tuna;

Acknowledging the importance of scientific research for the conservation and management of southern bluefin tuna and the importance of collecting scientific information relating to southern bluefin tuna and ecologically related species;

Recognising that it is essential that they cooperate to ensure the conservation and optimum utilisation of southern bluefin tuna;

Have agreed as follows:

¹ Came into force on 20 May 1994, the date of deposit of the third instrument of ratification, acceptance or approval with the Government of Australia, in accordance with article 17 (2):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>
Japan.....	8 April 1994
New Zealand	9 May 1994
Australia.....	20 May 1994

² United Nations, *Treaty Series*, vol. 1833, No. I-31363.

Article 1

This Convention shall apply to southern bluefin tuna (*Thunnus maccoyii*).

Article 2

For the purposes of this Convention:

- (a) "ecologically related species" means living marine species which are associated with southern bluefin tuna, including but not restricted to both predators and prey of southern bluefin tuna;
- (b) "fishing" means:
 - (i) the catching, taking or harvesting of fish, or any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or
 - (ii) any operation at sea in preparation for or in direct support of any activity described in sub-paragraph (i) above.

Article 3

The objective of this Convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.

Article 4

Nothing in this Convention nor any measures adopted pursuant to it shall be deemed to prejudice the positions or views of any Party with respect to its rights and obligations under treaties and other international agreements to which it is party or its positions or views with respect to the law of the sea.

Article 5

1. Each Party shall take all action necessary to ensure the enforcement of this Convention and compliance with measures which become binding under paragraph 7 of Article 8.
2. The Parties shall expeditiously provide to the Commission for the Conservation of Southern Bluefin Tuna scientific information, fishing catch and effort statistics and other data relevant to the conservation of southern bluefin tuna and, as appropriate, ecologically related species.

3. The Parties shall cooperate in collection and direct exchange, when appropriate, of fisheries data, biological samples and other information relevant for scientific research on southern bluefin tuna and ecologically related species.

4. The Parties shall cooperate in the exchange of information regarding any fishing for southern bluefin tuna by nationals, residents and vessels of any State or entity not party to this Convention.

Article 6

1. The Parties hereby establish and agree to maintain the Commission for the Conservation of Southern Bluefin Tuna (hereinafter referred to as "the Commission").

2. Each Party shall be represented on the Commission by not more than three delegates who may be accompanied by experts and advisers.

3. The Commission shall hold an annual meeting before 1 August each year or at such other time as it may determine.

4. At each annual meeting the Commission shall elect from among the delegates a Chair and a Vice-Chair. The Chair and the Vice-Chair shall be elected from different Parties and shall remain in office until the election of their successors at the next annual meeting. A delegate, when acting as Chair, shall not vote.

5. Special meetings of the Commission shall be convened by the Chair at the request of a Party supported by at least two other Parties.

6. A special meeting may consider any matter of relevance to this Convention.

7. Two-thirds of the Parties shall constitute a quorum.

8. The rules of procedure of the Commission and other internal administrative regulations as may be necessary to carry out its functions shall be decided upon at the first meeting of the Commission and may be amended by the Commission as occasion may require.

9. The Commission shall have legal personality and shall enjoy in its relations with other international organisations and in the territories of the Parties such legal capacity as may be necessary to perform its functions and achieve its ends. The immunities and privileges which the Commission and its officers shall enjoy in the territory of a Party shall be subject to agreement between the Commission and the Party concerned.

10. The Commission shall determine the location of its headquarters at such time as a Secretariat is established pursuant to paragraph 1 of Article 10.

11. The official languages of the Commission shall be Japanese and English. Proposals and data may be submitted to the Commission in either language.

Article 7

Each Party shall have one vote in the Commission. Decisions of the Commission shall be taken by a unanimous vote of the Parties present at the Commission meeting.

Article 8

1. The Commission shall collect and accumulate information described below:
 - (a) scientific information, statistical data and other information relating to southern bluefin tuna and ecologically related species;
 - (b) information relating to laws, regulations and administrative measures on southern bluefin tuna fisheries;
 - (c) any other information relating to southern bluefin tuna.
2. The Commission shall consider matters described below:
 - (a) interpretation or implementation of this Convention and measures adopted pursuant to it;
 - (b) regulatory measures for conservation, management and optimum utilisation of southern bluefin tuna;
 - (c) matters which shall be reported by the Scientific Committee prescribed in Article 9;
 - (d) matters which may be entrusted to the Scientific Committee prescribed in Article 9;
 - (e) matters which may be entrusted to the Secretariat prescribed in Article 10;
 - (f) other activities necessary to carry out the provisions of this Convention.
3. For the conservation, management and optimum utilisation of southern bluefin tuna:
 - (a) the Commission shall decide upon a total allowable catch and its allocation among the Parties unless the Commission decides upon other

appropriate measures on the basis of the report and recommendations of the Scientific Committee referred to in paragraph 2(c) and (d) of Article 9; and

- (b) the Commission may, if necessary, decide upon other additional measures.

4. In deciding upon allocations among the Parties under paragraph 3 above the Commission shall consider:

- (a) relevant scientific evidence;
- (b) the need for orderly and sustainable development of southern bluefin tuna fisheries;
- (c) the interests of Parties through whose exclusive economic or fishery zones southern bluefin tuna migrates;
- (d) the interests of Parties whose vessels engage in fishing for southern bluefin tuna including those which have historically engaged in such fishing and those which have southern bluefin tuna fisheries under development;
- (e) the contribution of each Party to conservation and enhancement of, and scientific research on, southern bluefin tuna;
- (f) any other factors which the Commission deems appropriate.

5. The Commission may decide upon recommendations to the Parties in order to further the attainment of the objective of this Convention.

6. In deciding upon measures under paragraph 3 above and recommendations under paragraph 5 above, the Commission shall take full account of the report and recommendations of the Scientific Committee under paragraph 2(c) and (d) of Article 9.

7. All measures decided upon under paragraph 3 above shall be binding on the Parties.

8. The Commission shall notify all Parties promptly of measures and recommendations decided upon by the Commission.

9. The Commission shall develop, at the earliest possible time and consistent with international law, systems to monitor all fishing activities related to southern bluefin tuna in order to enhance scientific knowledge necessary for conservation and management of southern bluefin tuna and in order to achieve effective implementation of this Convention and measures adopted pursuant to it.

10. The Commission may establish such subsidiary bodies as it considers desirable for the exercise of its duties and functions.

Article 9

1. The Parties hereby establish the Scientific Committee as an advisory body to the Commission.

2. The Scientific Committee shall:

- (a) assess and analyse the status and trends of the population of southern bluefin tuna;
- (b) coordinate research and studies of southern bluefin tuna;
- (c) report to the Commission its findings or conclusions, including consensus, majority and minority views, on the status of the southern bluefin tuna stock and, where appropriate, of ecologically related species;
- (d) make recommendations, as appropriate, to the Commission by consensus on matters concerning the conservation, management and optimum utilisation of southern bluefin tuna;
- (e) consider any matter referred to it by the Commission.

3. A meeting of the Scientific Committee shall be held prior to the annual meeting of the Commission. A special meeting of the Scientific Committee shall be called at any time at the request of a Party provided that such request is supported by at least two other Parties.

4. 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.

- 5. (a) Each Party shall be a member of the Scientific Committee and shall appoint to the Committee a representative with suitable scientific qualifications who may be accompanied by alternates, experts and advisers.
- (b) The Scientific Committee shall elect a Chair and a Vice-Chair. The Chair and the Vice-Chair shall be elected from different Parties.

Article 10

1. The Commission may establish a Secretariat consisting of an Executive Secretary to be appointed by the Commission and appropriate staff on conditions as may be determined by the Commission. The staff shall be appointed by the Executive Secretary.
2. Until such time as a Secretariat is established, the Chair of the Commission shall nominate from within his or her Government an official to act as Secretary to the Commission to perform the secretariat functions set out in paragraph 3 below for a term of one year. At each annual meeting of the Commission, the Chair shall advise the Parties of the name and address of the Secretary.
3. The Secretariat functions shall be prescribed by the Commission, and shall include the following:

- (a) receiving and transmitting the Commission's official communications;
- (b) facilitating the collection of data necessary to accomplish the objective of this Convention;
- (c) preparing administrative and other reports for the Commission and the Scientific Committee.

Article 11

1. The Commission shall decide upon an annual budget.
2. The contributions to the annual budget from each Party shall be calculated on the following basis:
 - (a) 30% of the budget shall be divided equally among all the Parties; and
 - (b) 70% of the budget shall be divided in proportion to the nominal catches of southern bluefin tuna among all the Parties.
3. Notwithstanding the provisions of Article 7, any Party that has not paid its contributions for two consecutive years shall not enjoy the right to participate in the decision-making process in the Commission until it has fulfilled its obligations, unless the Commission decides otherwise.
4. The Commission shall decide upon, and amend as occasion may require, financial regulations for the conduct of the Commission and for the exercise of its functions.
5. Each Party shall meet its own expenses arising from attendance at meetings of the Commission and of the Scientific Committee.

Article 12

The Commission shall collaborate with other inter-governmental organisations which have related objectives, *inter alia*, to obtain the best available information including scientific information to further the attainment of the objective of this Convention and shall seek to avoid duplication with respect to their work. The Commission may make arrangements with such inter-governmental organisations to these ends.

Article 13

With a view to furthering the attainment of the objective of this Convention, the Parties shall cooperate with each other to encourage accession by any State to this Convention where the Commission considers this to be desirable.

Article 14

1. The Commission may invite any State or entity not party to this Convention, whose nationals, residents or fishing vessels harvest southern bluefin tuna, and any coastal State through whose exclusive economic or fishery zone southern bluefin tuna migrates, to send observers to meetings of the Commission and of the Scientific Committee.
2. The Commission may invite inter-governmental or, on request, non-governmental organisations having special competence concerning southern bluefin tuna to send observers to meetings of the Commission.

Article 15

1. The Parties agree to invite the attention of any State or entity not party to this Convention to any matter relating to the fishing activities of its nationals, residents or vessels which could affect the attainment of the objective of this Convention.
2. Each Party shall encourage its nationals not to associate with the southern bluefin tuna fishery of any State or entity not party to this Convention, where such association could affect adversely the attainment of the objective of this Convention.
3. Each Party shall take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring their registration for the purpose of avoiding compliance with the provisions of this Convention or measures adopted pursuant to it.
4. The Parties shall cooperate in taking appropriate action, consistent with international law and their respective domestic laws, to deter fishing activities for southern bluefin tuna by nationals, residents or vessels of any State or entity not party to this Convention where such activity could affect adversely the attainment of the objective of this Convention.

Article 16

1. If any dispute arises between two or more of the Parties concerning the interpretation or implementation of this Convention, those 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 of Justice 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. The Annex forms an integral part of this Convention.

Article 17

1. This Convention shall be open for signature by Australia, Japan and New Zealand.
2. This Convention is subject to ratification, acceptance or approval by these three States in accordance with their respective internal legal procedures, and will enter into force on the date of deposit of the third instrument of ratification, acceptance or approval.

Article 18

After the entry into force of this Convention, any other State, whose vessels engage in fishing for southern bluefin tuna, or any other coastal State through whose exclusive economic or fishery zone southern bluefin tuna migrates, may accede to it. This Convention shall become effective for any such other State on the date of deposit of that State's instrument of accession.

Article 19

Reservations may not be made with respect to any of the provisions of this Convention.

Article 20

Any Party may withdraw from this Convention twelve months after the date on which it formally notifies the Depositary of its intention to withdraw.

Article 21

1. Any Party may at any time propose an amendment to this Convention.
2. If one-third of the Parties 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 Parties.

Article 22

1. The original of this Convention shall be deposited with the Government of Australia, which shall be the Depositary. The Depositary shall transmit certified copies thereof to all other Signatories and acceding States.
2. This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE AT Canberra on the tenth day of May 1993, in a single original, in the English and Japanese languages, each text being equally authentic.

[For the signatures, see p. 402 of this volume.]

ANNEX FOR AN ARBITRAL TRIBUNAL

1. The arbitral tribunal referred to in paragraph 3 of Article 16 shall be composed of three arbitrators who shall be appointed as follows:

- (a) The party commencing proceedings shall communicate the name of an arbitrator to the other party which, in turn, within a period of forty days following such notification, shall communicate the name of the second arbitrator. The parties shall, within a period of sixty 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 two arbitrators. The third arbitrator shall preside over the tribunal.
- (b) 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.

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

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

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

5. 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.

6. 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.