

No. 43918. Australia and France

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 [*United Nations, Treaty Series, vol. 2438, I-43918.*]

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 by notification, in accordance with article 13

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TRAITÉ ENTRE LE GOUVERNEMENT DE L'AUSTRALIE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF À LA COOPÉRATION DANS LES ZONES MARITIMES ADJACENTES AUX TERRES AUSTRALES ET ANTARCTIQUES FRANÇAISES (TAAF), À L'ÎLE HEARD ET AUX ÎLES MCDONALD. CANBERRA, 24 NOVEMBRE 2003 [*Nations Unies, Recueil des Traités, vol. 2438, I-43918.*]

ACCORD ENTRE LE GOUVERNEMENT DE L'AUSTRALIE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF À LA COOPÉRATION EN MATIÈRE D'APPLICATION DE LA LEGISLATION RELATIVE À LA PÊCHE DANS LES ZONES MARITIMES ADJACENTES AUX TERRES AUSTRALES ET ANTARTIQUES FRANÇAISES, À L'ÎLE HEARD ET AUX ÎLES MCDONALD. PARIS, 8 JANVIER 2007

Entrée en vigueur : 7 janvier 2011 par notification, conformément à l'article 13

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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

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.