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|  <p>Agreement on the Conservation<br/>of Albatrosses and Petrels</p> | <p style="text-align: center;"><b>Fifth Meeting of the Parties</b><br/><i>Santa Cruz de Tenerife, Spain, 4 - 8 May 2015</i></p> <p style="text-align: center;"><b>Report of Intersessional Committee<br/>established by Resolution 4.8</b></p> <p style="text-align: center;"><b><i>Intersessional Committee</i></b></p> |
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### **SUMMARY**

An intersessional committee was established by Resolution 4.8 to explore options that would enable any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels (relevant APEC member economies) to participate, as a first step, as observers in sessions of the Meeting of the Parties (MoP) and in meetings of its subsidiary bodies. The committee has worked expeditiously on the task it has been set. The committee agreed, as a first step, to focus its efforts on options for participation by relevant APEC member economies as observers. Five options have been considered: Option A—amending Rule 4(1) of the rules of procedure; Option B—status quo; Option C—adopting provisions pursuant to Article VIII.15 to enable participation by any relevant APEC member economy as observers; Option D—amending the Agreement; and Option E—entering into Memorandum of Understanding with APEC.

Considerable analysis and discussion has occurred among participating Parties on the intersessional committee about the merits and modalities of each option ([AC7 Doc 22](#); [AC8 Doc 10 Rev 1](#) refer). The committee agreed to put a proposal concerning observership by relevant APEC member economies to Parties intersessionally in accordance with Rule 24 of the rules of procedure (see copy of ACAP-ANCP Circular 2014-12 at **Annex 2**). The proposal was to amend Rule 4 to enable a relevant APEC member economy to apply for observership, allowing observership by that relevant APEC member economy except if one-third of the Parties objected. The proposal was rejected by a Party and the matter placed on the agenda of the Fifth Meeting of the Parties (MoP5), in accordance with Rule 24(5).

### **RECOMMENDATIONS**

The following recommendations are provided for the consideration of the Meeting of the Parties:

1. That Parties consider the work of the intersessional committee on options for relevant APEC member economies to participate, as a first step, as observers in sessions of the MoP and in meetings of its subsidiary bodies.

2. That Parties endeavour to agree on modalities allowing observership by relevant APEC member economies.
3. That Parties otherwise consider the ongoing role and terms of reference for the intersessional committee.

## 1. PROGRESS OF WORK OF INTERSESSIONAL COMMITTEE

### Background

1. Resolution 4.8 established an intersessional committee to explore options that would enable any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels (relevant APEC member Economies) to participate as observers in sessions of the Meeting of the Parties (MoP) and in meetings of its subsidiary bodies (copy at **Annex 1**). The committee commenced its work in December 2012. The committee appointed Jonathon Barrington (Australia) as its Chair. Representatives from Argentina, Australia, Brazil, Chile, Ecuador, France, New Zealand, Peru, South Africa, Spain the United Kingdom, Uruguay, as well as Canada the United States (as observers), and the Advisory Committee Chair (ex officio), have participated in the work of the committee. The committee has met in the margins of AC7 and AC8 and prepared two reports (see **AC7 Doc 22**; **AC8 Doc 10 Rev 1**).

2. The committee established a number of procedural guidelines concerning its work. These were designed to act as a guide for participants when considering the effect of the Agreement and of the rules of procedure for the MoP. The guidelines indicated that the committee would proceed on the basis of the views expressed by the participants during its deliberations.

3. The committee agreed, as a first step, to focus its efforts on options for participation as observers by relevant APEC member economies. The following options were considered:

- a. Option A—amending Rule 4(1) of the rules of procedure;
- b. Option B—status quo;
- c. Option C—adopting provisions pursuant to Article VIII.15 to enable participation by any APEC member economy as observers;
- d. Option D—amending the Agreement; and
- e. Option E—entering into Memorandum of Understanding with APEC.

Option A, Option B and Option C were considered in detail. The committee expressed a willingness to explore Option A and identified alternatives for implementing this option, including the proposal raised by Australia at the Fourth Session of the Meeting of the Parties ([MoP4 Doc 06](#) refers). The committee also expressed a willingness to explore Option B. The committee considered Option C as likely to raise differences of view among the Parties concerning the interpretation of Article VIII.15 of the Agreement, and discounted this option. Option D and Option E were also considered by the committee and these options were also discounted.

## Provisions of the Agreement and Rules of Procedure

4. The committee considered relevant provisions of the *Agreement on the Conservation of Albatrosses and Petrels* (the Agreement)<sup>1</sup> concerning Meetings of the Parties, and the rules of procedure for the MoP.

### *Article VIII of the Agreement*

5. Article VIII concerns Meetings of the Parties. It provides, among other things, for observership at sessions of the MoP.

6. Article VIII.4 is a general provision that enables the MoP to determine who may participate as observers at sessions of the MoP. It requires provisions concerning observership to be set out in the rules of procedure for the MoP, and that these rules of procedure are not to be unduly restrictive.

7. Article VIII.5 identifies States, agencies, organisations and Secretariats, and Article VIII.6 identifies bodies, that may participate, as of right, as observers in sessions of the MoP. Such observership is subject to the rules of procedure. Nothing in the Agreement suggests that only States, agencies, organisations, Secretariats, and bodies may participate as observers - the specificity of paragraphs 5 and 6 of Article VIII do not limit the generality of paragraph 4 of Article VIII.

8. Article VIII.15 enables the MoP to establish a 'relationship' between the Agreement and relevant APEC member economies.

9. The intersessional committee was aware there are different views among Parties about the interpretation of Article VIII.15:

- a. **Broad view of Article VIII.15**—one view is that the MoP may adopt by consensus provisions for the 'relationship' in any manner the MoP decides. On this view, Article VIII.15 could be used to confer any one of number of types of status on relevant APEC member economies, including full voting status and observer status. For observer status, Article VIII.15 would overlap with Article VIII.4.
- b. **Narrow view of Article VIII.15**—an alternative view is that where the MoP adopts provisions for the 'relationship' such provisions are to enable relevant APEC member economies to participate in the work of the MoP and its subsidiary bodies, including decision-making, and to comply with all obligations under the Agreement. On this view, the purpose of Article VIII.15 is to enable APEC member economies not recognised as States to participate in the treaty system (including decision-making) and to assume treaty obligations as if they were a Party, despite the limitation in Article XV of ACAP that only Range States and regional economic integration organisations may become Parties. Further, on this view, Article VIII.15 has nothing to do with observers, which is left exclusively to paragraphs 4, 5 and 6 of Article VIII. The fact that paragraphs 4, 5 and 6 of Article VIII already deal with observers, and that the text of these provisions is broad enough to cover all types of observers, supports the view that Article VIII.15 does not deal with observers.

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<sup>1</sup> *Agreement on the Conservation of Albatrosses and Petrels*, done on 19 June 2001, 2258 UNTS 257 (entered into force 1 February 2004).

*Rules of Procedure*

10. The initial rules of procedure for the MoP were adopted by consensus at the First Session of the Meeting of the Parties: Hobart, 10-12 November 2004 (MoP-1). Rule 4(1) was adopted at MoP1. The rules of procedure have been amended from time-to-time by consensus.

11. There are different views among Parties about the interpretation in Rule 4(1) of the phrase ‘any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement’:

- a. **Broad view of Rule 4(1)**—one view is that this phrase in Rule 4(1), in contrast to the rest of Rule 4(1), is correctly adopted under Article VIII.15 of the Agreement. This view of Rule 4(1) accords with the broad view of interpretation of Article VIII.15 (see above) and the view that observership by APEC member economies is concurrently covered by both Articles VIII.4 and VIII.15.
- b. **Narrow view of Rule 4(1)**—an alternative view is that the observer provisions in Rule 4(1), including this phrase, are adopted under the powers set out in paragraphs 4, 5 and 6 of Article VIII of the Agreement. On this view, the reference to ‘in respect of Article VIII.15 of the Agreement’ merely sets out which APEC member economies are eligible to participate as observers, that is those whose vessels fish within the range of albatrosses and petrels. This view of Rule 4(1) accords with the narrow view of Article VIII.15 (see above) and the view that observership is exclusively addressed in paragraphs 4, 5 and 6 of Article VIII. Under this view, it is acknowledged that the reference to ‘Article VIII.15’ in Rule 4(1) is ambiguous and thereby unhelpful. If this view is considered as the correct view, it would likely be desirable to remove this ambiguity as part of any amendments.

12. Under the broad view of Rule 4(1) there is a further issue of what is meant by the requirement in Article VIII.15 for the MoP to ‘adopt by consensus provisions for the relationship to this Agreement’ by any APEC member economy, and therefore whether including the reference to relevant APEC member economies in Rule 4(1) is sufficient in itself to fulfil that requirement. In this context, either:

- a. **Broad view of adopting provisions by consensus under Article VIII.15**—Rule 4(1) is a provision adopted by consensus, as referred to in Article VIII.15, that provides for participation by relevant APEC member economies, and no further step is needed for relevant APEC member economies to participate as observers in sessions of the MoP; or
- b. **Narrow view of adopting provisions by consensus under Article VIII.15**—once there are provisions adopted by consensus under Article VIII.15 then Rule 4(1) allows relevant APEC member economies to participate as observers in sessions of the MoP.

*Potential ambiguity in Rule 4(1)*

13. The committee considered the potential ambiguity in Rule 4(1) of the rules of procedure. An interpretation of the phrase ‘any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement’ in Rule 4(1) that would best achieve the purpose and object of a provision of the Agreement and the rules of procedure of the Meeting of the Parties is to be preferred over other

interpretations. To assist in any interpretation of this phrase the committee has identified the following propositions:

a. **Proposition 1**—*the narrow view of Rule 4(1) is correct*

- This proposition suggests that Article VIII.4 provides a proper foundation for observership by APEC member economies (Paragraph 11(b) above). It acknowledges that the reference to ‘Article VIII.15’ in Rule 4(1) is ambiguous, and recommends removing this ambiguity as part of any amendments to the rules of procedure.
- This proposition accords Option A not Option B—this is because the status quo does not resolve the ambiguity of the reference to ‘Article VIII.15’ in Rule 4(1).
- This proposition also accords with the proposal Australia raised at MoP4 for a minimal change to the rules of procedure (**MoP4 Doc 06** refers).

b. **Proposition 2**—*the broad view of Rule 4(1) is correct — the broad view of Article VIII.15 is also correct — and the broad view of adopting provisions by consensus under Article VIII.15 is correct*

- This proposition suggests that observership by relevant APEC member economies is concurrently covered by both Articles VIII.4 and VIII.15. It recognises that the phrase ‘any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement’ was adopted under Article VIII.15 consistent with the broad view of Article VIII.15 (Paragraph 9(a) above).
- Under this proposition, for Rule 4(1) to be consistent with the Agreement (and therefore valid), the broad view of adopting provisions by consensus under Article VIII.15 would also need to apply (Paragraph 12(a) above). This is because if the narrow view of adopting provisions by consensus under Article VIII.15 were to apply (Paragraph 12(b) above) then the Agreement would require the adoption of provisions by consensus providing for observership by relevant APEC member economies before provision could validly be made in the Rules of Procedure.
- This proposition accords with Option B—as it suggests the ambiguity in Rule 4(1) is unproblematic such that Parties can proceed without amending the rules of procedure.

c. **Proposition 3**—*the broad view of Rule 4(1) is correct — and the narrow view of Article VIII.15 is also correct*

- This proposition is internally inconsistent and, therefore, clearly cannot be correct. It highlights the difficulty in seeking to reconcile the effect of a proposition. It indicates that observership by relevant APEC member economies is only covered by Article VIII.4 (in a manner similar to **Proposition 1** above) and not Article VIII.15. This is because the narrow view of Article VIII.15 is based on the premise that the ‘relationship’ between relevant APEC member economies and the Agreement would need to encompass participating in the work of the Meeting of the Parties, including decision making, and to comply with all obligations under the Agreement (Paragraph 9(b) above). This form of ‘relationship’ envisages affording full participatory rights to the relevant APEC member economies.

Rule 4(1), in purporting to allow relevant APEC member economies to send observers to meetings, therefore does not provide the extent of participation in meetings envisaged by Article VIII.15. Given that under the broad view of Rule 4(1) the reference to relevant APEC economies is adopted under Article VIII.15, adopting an observer-only provision is inconsistent with Article VIII.15. That is, it is not possible for the broad view of Rule 4(1) and the narrow view of Article VIII.15 to sit side-by-side.

14. The committee noted that the above propositions highlight there are only limited ways for observership by relevant APEC member economies to be achieved under the Agreement:
- a. observership may be achieved under the operation of Article VIII.4 given that this is a provision of general operation concerning observership at sessions of the MoP; or
  - b. observership may be achieved under the operation of Article VIII.15 where the broad view of the article applies; or
  - c. observership may be achieved under the concurrent operation of Articles VIII.4 and VIII.15 where the broad view of Article VIII.15 applies.

#### **Option A**

15. The committee identified several alternative approaches under Option A. These options are as follows:

- a. Amending Rule 4(a) to allow participation, as an observer by 'any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels'. This proposal coincides with the proposal of Australia to MoP4 to remove ambiguity in Rule 4(1).
- b. Amending Rule 4 to include a requirement for written reasons for any objection and that at least one third of the parties object.
- c. Amending Rule 4 to include a requirement that at least one third of the parties object. This proposal corresponds to participation by any international scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels (see Rule 4(2)-(3)).
- d. Amending Rule 4 to include a requirement for written reasons for any objection and that at least one party objects.
- e. Amending Rule 4 to include a requirement for a party to object. This proposal corresponds to participation by any other scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels (see Rule 4(4)-(5)).

16. The Committee reviewed the two options under consideration, as well as alternatives under the options at AC8. The committee noted the analysis about the potential feasibility of the options and related alternatives (see Paragraphs 4-14 above). The committee reviewed the views and concerns within the committee about the following:

- a. **Reasoned objections**—some, but not others, considered inclusion of this mechanism was problematic, as it would inappropriately require Parties to explain the reasons for their decisions concerning observership.

- b. **Single objection**—some, but not others, considered the single objection approach was problematic, as it put at risk observership by relevant APEC member economies to the detriment of ACAP's work.
- c. **Status quo**—some, but not others, considered the status quo was problematic, as the potential ambiguity in Rule 4(1) could potentially give rise to procedural difficulties at future Meetings of the Parties.

17. The committee agreed to put a proposal concerning observership by relevant APEC member economies to Parties intersessionally in accordance with Rule 24 of the rules of procedure (see copy of ACAP-ANCP Circular 2014-12 at **Annex 2**). The proposal was to amend Rule 4 to enable a relevant APEC member economy to apply for observership, allowing observership by that relevant APEC member economy except if one-third of the Parties objected (this proposal accorded with **Proposition 1** at Paragraph 13(a) above). Under the proposal there would be no requirement to provide written reasons for objections. The proposal was rejected by a Party and the matter placed on the agenda of the Fifth Meeting of the Parties (MoP5), in accordance with Rule 24(5).

#### **Option B**

18. The committee considered Option B. This option considers that the existing rules of procedure are sufficient to enable relevant APEC member economies to participate as observers in sessions of the MoP. It does not fix the ambiguity identified in Rule 4(1), but rather proceeds on the basis that the ability of relevant APEC member economies to participate as observers is sufficiently clear despite the ambiguity (**Proposition 2** at Paragraph 13(b) above).

## **2. CONSIDERATIONS FOR THE MEETING OF THE PARTIES**

19. The committee invites Parties consider the work of the intersessional committee on options for relevant APEC member economies to participate, as a first step, as observers in sessions of the MoP and in meetings of its subsidiary bodies.

20. The committee encourages Parties to endeavour to agree at MoP5 on modalities allowing observership by relevant APEC member economies.

21. In the event that MoP5 is unable to agree on modalities allowing observership by relevant APEC member economies, the committee invites the Parties to consider the ongoing role and terms of reference for the intersessional committee.

**ANNEX 1.**

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**AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS**

**Resolution 4.8**

**Resolution outlining a process towards implementation of Article VIII.15 of the Agreement on the Conservation of Albatrosses and Petrels**

Adopted by the Fourth Session of the Meeting of the Parties, Lima, 23 - 27 April 2012

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*Recognising* that the conservation status of albatrosses and petrels is threatened by incidental mortality associated with commercial fishing activities, including those of distant water fishing fleets;

*Further recognising* the importance of ensuring that the threats posed to albatrosses and petrels are effectively mitigated throughout their range;

*Aware* that such protection can be greatly enhanced by cooperation with APEC member economies whose vessels fish within the range of albatrosses and petrels listed in Annex I to ACAP and particularly those with a high incidence of bycatch of albatross and petrel species;

*Recalling* that Article VIII.15 ACAP provides that the Meeting of the Parties may adopt by consensus provisions for the relationship to ACAP by any member economy of the Asia Pacific Economic Cooperation Forum (APEC) whose vessels fish within the range of albatrosses and petrels; and that those provisions, once adopted, shall enable the member economy to participate in the work of the Meeting of the Parties and its subsidiary bodies, including decision-making and to comply with all obligations under ACAP;

*Conscious* of the need to provide the Meeting of the Parties with options to enable the participation of APEC member economies in sessions of the Meeting of the Parties and its subsidiary bodies;

*Further conscious* of the benefit to ACAP of the participation in the Meeting of the Parties and its subsidiary bodies by APEC member economies, including as observers:

**The Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels**

1. *Welcomes* the interest shown by APEC member economies in the work of ACAP;
2. *Decides* to establish an intersessional committee to develop options for the participation, including as observers, in the Meeting of the Parties and its subsidiary bodies, of APEC member economies, without prejudging any decision by the Meeting of the Parties;

3. *Further decides* that the intersessional committee will present the outcome of its work to the Parties at the earliest opportunity intersessionally, for consideration and adoption by consensus in accordance with the relevant Rules of Procedure, or at the 5th Session of the Meeting of the Parties at the latest;
4. *Further decides* that terms of reference for the intersessional committee established by paragraph 2 are annexed to this Resolution.

**RESOLUTION 4.8 – ANNEX**

**Terms of Reference for the Intersessional Committee**

1. The intersessional committee will be open for participation of any Party at any time. The intersessional committee will consist of representatives nominated by Parties, and the Chair of the Advisory Committee.
2. The intersessional committee will nominate its own chair from amongst the appointed representatives of Parties.
3. The intersessional committee will conduct its work as a matter of urgency, making maximum use of electronic means. Should physical meetings be required, these will, to the extent practical, take place in the margins of other meetings.
4. The specific options to be considered and developed by the intersessional committee are those that would, taking account of relevant considerations (including legal and political), enable APEC member economies to participate, including as observers, in Sessions of the Meeting of the Parties and in meetings of its subsidiary bodies.
5. The intersessional committee will conduct informal consultation with APEC, relevant APEC member economies and non-Party Range States in conducting its work.
6. The intersessional committee may receive and consider submissions from observers.
7. The intersessional committee will present to the Parties a report setting out the available options, the basis for each option and the modalities by which each option could be achieved. This report will be circulated to the Parties at least 90 days before 7th Meeting of the Advisory Committee.
8. If no subsequent consensus decision is taken in accordance with the relevant Rules of Procedure, the intersessional committee will continue its work and will present updated reports to the 8th Meeting of the Advisory Committee and, if necessary to the 5th Session of the Meeting of the Parties.

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**ANNEX 2.**



Agreement on the Conservation  
of Albatrosses and Petrels

15 December 2014

**ACAP - ANCP Circular 2014-12**

To: ACAP National Contact Points (ANCP)

**Subject: Amending Rule 4 of the Rules of Procedure of the Meeting of the Parties (MoP)**

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The Secretariat has received a request from Australia to forward the proposal appended to this circular in Annex A to ACAP Parties, for an intersessional decision to be taken in accordance with Rule 24 of the Rules of Procedure of the Meeting of the Parties (MoP). Australia has forwarded this proposal in its position as Chair of the intersessional committee established by the Meeting of the Parties under Resolution 4.8, to develop options for the participation, including as observers, in the Meeting of the Parties and its subsidiary bodies, of APEC member economies.

In accordance with the requirements of Rule 24, it would be appreciated if Parties could respond to this communication as soon as possible, but no later than 29 January 2015, indicating whether they wish to support it, reject it, abstain on it, require additional time to consider it, or whether they consider it is not necessary for the vote to be taken during the period between Sessions of the Meeting of the Parties.

Warren Papworth  
Executive Secretary  
ACAP Secretariat

## PROPOSAL SUBMITTED BY AUSTRALIA

**Purpose:** In accordance with Rule 24 of the Rules of Procedure of the Meeting of the Parties (MoP), and on behalf of the Intersessional Committee established by Resolution 4.8, Australia seeks an intersessional decision from ACAP Parties concerning a proposal to amend Rule 4 of the Rules of Procedure of the MoP. The proposal is detailed in the Recommendation below.

**Background:** As mentioned in the Final Report of the Eighth Meeting of the Advisory Committee (AC8): Punta del Este, Uruguay, 15-19 September 2014, the Intersessional Committee established by Resolution 4.8 has agreed to put a proposal concerning observership by any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels (**relevant APEC member economies**) in sessions of the Meeting of the Parties and its subsidiary bodies to ACAP Parties intersessionally.

**Recommendations:** In accordance with Rule 24 of the Rules of Procedure of the MoP, ACAP Parties' approval is sought for the following amendments to Rule 4 of the Rules of Procedure of the MoP:

1. That the reference in Rule 4(1) to 'any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, Paragraph 15 of the Agreement,' be deleted, as follows:

### **Rule 4 - Observers**

- (1) All signatories to the Agreement, other States which are not Parties, ~~any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement,~~ the United Nations, any specialised agency of the United Nations, any regional economic integration organisation, any Secretariat of a relevant international convention, particularly regional fisheries management organisations, may send observers to the Sessions of the Meeting of the Parties, who shall have the right to participate but not vote.
2. That a new Rule 4(2) be added to Rule 4 (see below). The new paragraph would provide that any relevant APEC member economy may request observership to sessions of the Meeting of the Parties and its subsidiary bodies. The content of the new paragraph is similar to existing Rule 4(2). However, additional content would be included to distinguish those relevant APEC member economies that would need to request observership from: (a) relevant APEC member economies that are Parties to the Agreement, and (b) relevant APEC member economies otherwise described in Article VIII.5 of the Agreement.

(2) Any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels, that is not already a Party or otherwise described in Article VIII (5) of the Agreement, may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

3. That a new Rule 4(3) be added to Rule 4 (see below). The new paragraph would provide that the request for observership by a relevant APEC member economy is to be made in writing. This written request is to be received by the Secretariat at least 90 days before the commencement of the relevant session of the Meeting of the Parties or subsidiary body. Parties would be required to advise the Secretariat of the acceptance or rejection of any applications for observership by relevant APEC member economies no less than 60 days before the session. An applicant would then be permitted to attend the session as a non-voting observer unless one-third of the Parties expressed an objection. The content of the new paragraph is similar to existing Rule 4(3).

(3) Written applications for attendance from such member economies (described in paragraph 2) should be received by the Secretariat at least 90 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 60 days before the Session. An applicant shall be permitted to attend as a non-voting observer unless one third of the Parties object to their application.

4. That Rule 4(2) be renumbered as Rule 4(4) and amended (see below). The amendment would include the phrase 'as an observer' after the phrase '... may request admittance' for clarity.

~~(2)~~(4) Any international scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

5. That Rule 4(3) be renumbered as Rule 4(5) and amended (see below). The amendment would change the reference to the previous paragraph from 'paragraph 2' to 'paragraph 4'.

~~(3)~~(5) Written applications for attendance from such international bodies (described in paragraph ~~2~~4) should be received by the Secretariat at least 90 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 60 days before the Session. An applicant shall be permitted to attend as a non-voting observer unless one third of the Parties object to their application.

6. That Rule 4(4) be renumbered as Rule 4(6) and amended (see below). The amendment would include the phrase 'as an observer' after the phrase '... may request admittance' for clarity.

~~(4)~~(6) Any other scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

7. That Rule 4(5) be renumbered as Rule 4(7) and amended (see below). The amendment would change the reference to the previous paragraph from 'para 4' to 'paragraph 6'.

~~(5)~~(7) Written applications for attendance from such other bodies (described in ~~para 4~~paragraph 6) should be received by the Secretariat at least 60 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 30 days before the Session. An applicant shall be permitted to attend as a non-voting observer provided no objection is received.

8. That Rule 4(6) be renumbered as Rule 4(8) and amended (see below). The amendment would require any relevant APEC member economy that is invited to attend a session of the Meeting of the Parties or its subsidiary bodies to provide the Secretariat with the names of Representatives attending as observers.

~~(6)~~(8) Prior to the Session, the names of Representatives of observers shall be submitted to the Secretariat by the State, agency, organisation, or member economy of the Asia Pacific Economic Co-operation Forum or body invited to attend.

9. That Rule 4(7) be renumbered as Rule 4(9) (see below).

~~(7)~~(9) In relation to Article XI of the Agreement, the Secretariat shall be bound by the above procedures.

10. In light of the above, that ACAP Parties adopt the following decision to replace Rule 4 of the Rules of Procedure for the MoP.

The decision of ACAP Parties on the above proposals is requested by **29 January 2015**, in accordance with Rule 24(3) of the MoP Rules of Procedure.

## **AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS**

### **Decision of the Parties to the Agreement**

#### **Amendment to the Rules of Procedure**

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*Recognising* that the conservation status of albatrosses and petrels is threatened by incidental mortality associated with commercial fishing activities, including those of distant water fishing fleets;

*Further recognising* the importance of ensuring that the threats posed to albatrosses and petrels are effectively mitigated throughout their range;

*Aware* that such protection can be greatly enhanced by cooperation with member economies of the Asia Pacific Economic Co-operation Forum (APEC) whose vessels fish within the range of albatrosses and petrels listed in Annex I to the Agreement and particularly those with a high incidence of bycatch of albatross and petrel species;

*Recalling* that the current Rules of Procedure for the Meeting of the Parties are contained in Appendix A of Resolution 3.8;

*Further recalling* that Article VIII (4) of the Agreement provides that the Meeting of the Parties shall make provision in its Rules of Procedure for governing the attendance and participation of observers, and that such rules shall not be unduly restrictive in this respect;

*Noting* that Rule 24 of the Rules of Procedure for the Meeting of the Parties establishes a mechanism for the Meeting of Parties to take a decision in advance of the next ordinary Session of the Meeting of the Parties;

#### **The Parties to the Agreement on the Conservation of Albatrosses and Petrels**

Decide to replace Rule 4 of the Rules of Procedure for the Meeting of the Parties with the following:

##### **Rule 4 - Observers**

(1) All signatories to the Agreement, other States which are not Parties, the United Nations, any specialised agency of the United Nations, any regional economic integration organisation, any Secretariat of a relevant international convention, particularly regional fisheries management organisations, may send observers to the Sessions of the Meeting of the Parties, who shall have the right to participate but not vote.

(2) Any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels, that is not already a Party or otherwise described in Article VIII (5) of the Agreement, may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

(3) Written applications for attendance from such member economies (described in paragraph 2) should be received by the Secretariat at least 90 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 60 days before the Session. An applicant shall be permitted to attend as a non-voting observer unless one third of the Parties object to their application.

(4) Any international scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

(5) Written applications for attendance from such international bodies (described in paragraph 4) should be received by the Secretariat at least 90 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 60 days before the Session. An applicant shall be permitted to attend as a non-voting observer unless one third of the Parties object to their application.

(6) Any other scientific, environmental, cultural or technical body concerned with the conservation and management of marine living resources or the conservation of albatrosses and petrels may request admittance as an observer to Sessions of the Meeting of the Parties and its subsidiary bodies. Such participation may include submitting documents to the Secretariat for distribution to the Parties as information documents and addressing the Sessions of the Meeting of the Parties.

(7) Written applications for attendance from such other bodies (described in paragraph 6) should be received by the Secretariat at least 60 days before the relevant Session, and circulated forthwith by the Secretariat to Parties. Parties shall inform the Secretariat of their acceptance or rejection of all applications no less than 30 days before the Session. An applicant shall be permitted to attend as a non-voting observer provided no objection is received.

(8) Prior to the Session, the names of Representatives of observers shall be submitted to the Secretariat by the State, agency, organisation or member economy of the Asia Pacific Economic Co-operation Forum or body invited to attend.

(9) In relation to Article XI of the Agreement, the Secretariat shall be bound by the above procedures.