

 <p>Agreement on the Conservation of Albatrosses and Petrels</p>	<p style="text-align: center;">Ninth Meeting of the Advisory Committee <i>La Serena, Chile, 9 - 13 May 2016</i></p> <p style="text-align: center;">Resolution 5.8 — progressing implementation of art VIII(15) of the Agreement on the Conservation of Albatrosses and Petrels</p> <p style="text-align: center;"><i>Australia</i></p>
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SUMMARY

Resolution 5.8 continues work on implementing art VIII(15) of the Agreement on the Conservation of Albatrosses and Petrels (the **Agreement**). Article VIII(15) concerns, among other things, establishing provisions enabling participation 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 economy**) in the work of the Agreement. The Meeting of the Parties has considered, in the first instance, provisions concerning observership, without arriving at a consensus. It is appropriate to establish provisions for participation by relevant APEC member economies for the consideration of the Meeting of the Parties. Matters to be addressed in participatory provisions are identified in this paper. Parties and cooperating non-Parties are invited to participate intersessionally in advancing Resolution 5.8.

RECOMMENDATIONS

1. That the Advisory Committee notes and discusses establishing provisions enabling participation 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 economy**) in the work of the Agreement.
2. That Parties and cooperating non-Parties continue to participate intersessionally in implementing art VIII(15) of the Agreement, pursuant to Resolution 5.8.

1. CONTEXT

Resolution 5.8 (included as Annex A) continues work on implementing art VIII(15) of the Agreement on the Conservation of Albatrosses and Petrels (the **Agreement**). The resolution establishes an intersessional committee to continue to develop options for the participation 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 economy**) in the work of the Agreement. Prior work under Resolution 4.8 led, in the first instance, to consideration intersessionally, and by the Fifth Meeting of the Parties (Santa Cruz de Tenerife, Spain, 4-8 May 2015), of provisions concerning observership, without arriving at a consensus. To fulfil the mandate established by the resolution it is appropriate to establish provisions for participation by relevant APEC member economies for the consideration of the Meeting of the Parties.

2. IMPLEMENTING ARTICLE VIII(15) OF THE AGREEMENT

Article VIII(15) enables provisions to be adopted by consensus concerning participation by any relevant APEC member economy in the work of the Agreement (see below). Participation may include, among other things: observership, participating in the work of the Meeting of the Parties and its subsidiary bodies (potentially in a manner consistent with participation by cooperating non-Parties), participating in decision-making, and complying with all obligations under the Agreement.

ARTICLE VIII Meeting of the Parties

15. The Meeting of the Parties may adopt by consensus provisions for the relationship to this Agreement by any member economy of the Asia Pacific Economic Co-operation forum whose vessels fish within the range of albatrosses and petrels. 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 this Agreement. For this purpose, references under those provisions to those participating in the Meeting of the Parties or its subsidiary bodies shall include such a member economy as well as Parties.

In establishing provisions for the participation of relevant APEC member economies in the work of the Agreement, there are a range of matters that ordinarily should be considered. Provisions concerning participation by relevant APEC member economies in the work of the Agreement should include, among other things, provisions concerning: (1) observership, (2) cooperation, and (3) commitment to be bound by the terms of the Agreement. The provisions would provide relevant APEC member economies with a contingent status under the Agreement. The relevant APEC member economy's participatory rights and obligations under the Agreement would alter depending upon their level of commitment to the Agreement.

Implementation of art VIII(15) may occur by way of a resolution of the Meeting of the Parties. This would enable the participatory provisions to remain under review, and for amendments to be made in light of changing circumstances. The resolution would require a consensus decision of the Meeting of the Parties, consistent with the wording of art VIII(15).

1.1. Observer status

Provisions would be established enabling any relevant APEC member economy to participate in Meetings of the Parties and its subsidiary bodies as an observer.

When implemented, any relevant APEC member economy may participate as observers by sending representatives to sessions of the Meeting of the Parties and its subsidiary bodies. The representatives would have the right to participate, but not vote. Participation by the representatives would be subject to the rules of procedure applying to the session being attended, i.e. rules of procedure for Meetings of the Parties, and rules of procedure for the meetings of the Advisory Committee, which apply *mutatis mutandis* to meetings of working groups established by the Advisory Committee.

1.2. Cooperating APEC member economy status

Provisions would be established enabling any relevant APEC member economy to participate in Meetings of the Parties and its subsidiary bodies as a Cooperating APEC member economy. The Cooperating APEC member economy would participate in Meetings of the Parties and its subsidiary bodies as an observer, and would submit all the data and information that Parties to the Agreement are required to submit.

When implemented, any relevant APEC member economy may seek to attain the status of a Cooperating APEC member economy. This status would be achieved through an application process involving the Meeting of the Parties, and maintained through the ongoing cooperation of the relevant APEC member economy. The status may be suspended or revoked in circumstances where there was a failure to comply with identified requirements for maintaining the Cooperating APEC member economy status. The status would be reviewed by the Meeting of the Parties.

The following elements would be included in provisions enabling any relevant APEC member economy to participate in Meetings of the Parties and its subsidiary bodies as a Cooperating APEC member economy:

- a. Prior to each session of the Meeting of the Parties the Secretariat would write to all relevant APEC member economies inviting them to seek to attain the status of Cooperating APEC member economy.
- b. Any relevant APEC member economy with an interest in the conservation of albatrosses and petrels may make a written request to the Meeting of the Parties for the status of Cooperating APEC member economy. The request should be received in sufficient time for it to be translated into the official languages of the Agreement and circulated to Parties prior to the relevant Meeting of the Parties.
- c. Relevant information would need to be included in the request including: reasons why Cooperating APEC member economy status is being sought, a commitment to cooperate fully in the implementation of the Agreement and resolutions adopted by Meetings of the Parties, a commitment to provide all data and information Parties to the Agreement are required to submit, and any other relevant information, as determined by the Meeting of the Parties.
- d. The Meeting of the Parties would decide whether the status of Cooperating APEC member economy should be accorded, taking into consideration the information provided by the relevant APEC member economy, and benefits of enhanced cooperation with the

relevant APEC member economy in achieving and maintaining a favourable conservation status for albatrosses and petrels.

- e. A Cooperating APEC member economy would be entitled to participate in sessions of Meetings of the Parties and its subsidiary bodies as an observer. They would commit to apply the Agreement and resolutions; and submit all the data and information that Parties to the Agreement are required to submit, particularly concerning efforts to mitigate bycatch of albatrosses and petrels at sea.
- f. The Meeting of the Parties would monitor the activities of the Cooperating APEC member economy and its peoples and fishing vessels including their implementation of resolutions and best practices for conserving albatrosses and petrels.
- g. Where the Cooperating APEC member economy fails to comply with any of the commitments of a Cooperating APEC member economy, the Meeting of the Parties may take appropriate action, which may include, among other things, revocation of Cooperating APEC member economy status.

1.3. Commitment to be bound by the terms of the Agreement

Provisions would be established enabling any relevant APEC member economy that makes a firm commitment to be bound by the terms of the Agreement to participate in Meetings of the Parties and its subsidiary bodies as a Participating APEC member economy. The Participating APEC member economy would participate in Meetings of the Parties and its subsidiary bodies on a generally equivalent basis as Parties, including participating in decision-making in accordance with the Agreement and rules of procedure.

When implemented, any relevant APEC member economy may attain the status of a Participating APEC member economy. This status would be achieved by the relevant APEC member economy providing a written instrument expressing its firm commitment to be bound by the terms of the Agreement. The instrument would be lodged with the Depositary government and would become effective within a stipulated period.

The status may be suspended or revoked in circumstances where there was a failure to comply with identified requirements for maintaining the Participating APEC member economy status. The status would be reviewed by the Meeting of the Parties.

The following elements would be included in provisions enabling any relevant APEC member economy to participate in Meetings of the Parties and its subsidiary bodies as a Participating APEC member economy:

- a. Prior to each session of the Meeting of the Parties the Secretariat would write to all relevant APEC member economies inviting them to seek to attain the status of Participating APEC member economy.
- b. Any relevant APEC member economy with an interest in the conservation of albatrosses and petrels may provide a written instrument to the Depositary government expressing its firm commitment to be bound by the terms of the Agreement. The written instrument would be translated into the official languages of the Agreement and circulated to Parties.
- c. The commitment would become effective within a stipulated period.
- d. After the commitment came into effect, the relevant APEC member economy would be recognised as a Participating APEC member economy and would be able to participate in Meetings of the Parties and its subsidiary bodies on a generally equivalent basis as

Parties, including participating in decision-making in accordance with the Agreement and rules of procedure.

- e. Participating APEC member economies would, among other things, commit to apply the Agreement and resolutions; submit all data and information that Parties to the Agreement are required to submit, particularly concerning efforts to mitigate bycatch of albatrosses and petrels at sea; and make a financial contribution under the Agreement.
- f. Withdrawal of the commitment would be enabled by written notification provided to the Depositary government. The written instrument would be translated into the official languages of the Agreement and circulated to Parties.
- g. The notice of withdrawal would become effective within a stipulated period.

3. INTERSESSIONAL COMMITTEE ESTABLISHED BY RESOLUTION 5.8

Parties and cooperating non-Parties are invited to continue to participate intersessionally in implementing art VIII(15) of the Agreement, by engaging in the work of the intersessional committee established by Resolution 5.8. The committee will continue discussing establishing provisions enabling participation by any relevant APEC member economy in the work of the Agreement.

ANNEX 1

AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS

Resolution 5.8

Resolution progressing implementation of Article VIII.15 of the Agreement on the Conservation of Albatrosses and Petrels

Adopted by the Fifth Session of the Meeting of the Parties, Santa Cruz de Tenerife, Spain,
4 – 8 May 2015

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 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 Co-operation forum 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;

Bearing in mind the considerations on this topic made in the context of the discussions of the intersessional committee before the Fifth Meeting of the Parties;

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 renew the mandate of the intersessional committee to continue 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 6th 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 5.8 – 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 9th 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 9th Meeting of the Advisory Committee and, if necessary to the 6th Session of the Meeting of the Parties.