

QUESTIONS ON NOTICE FROM PUBLIC HEARING 17 MARCH 2014

JOINT STANDING COMMITTEE ON TREATIES

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Rome, 22 November 2009)

Response by Sustainable Resource Management Division, Department of Agriculture

Mr KELVIN THOMSON:

And the extent of illegal and irregular fishing, is that increasing, is there increased pressure on the stocks, or is it stable, or is it progressively being got under control? What is the picture?

There are few reliable estimates of the extent of illegal, unregulated and unreported (IUU) fishing globally; however, an estimate in 2008 put the cost of IUU fishing at around US\$23 billion per year, equivalent to around 26 million tonnes of marine fish (*The Global Extent of Illegal Fishing*, MRAG Asia Pacific, Fisheries Centre, University of British Columbia, April 2008) or around 28 per cent of world capture fisheries production in 2008 of around 90 million tonnes (United Nations Food and Agriculture Organisation (FAO)).

IUU fishing continues to be a significant problem world wide. This is in part due to inadequate controls on the landing of IUU caught fish, especially in the ports of developing States.

Within Australian waters, the result of Australia's deterrence and prevention measures is that incursions by foreign fishing vessels have fallen dramatically. In 2005-06, 367 suspected illegal foreign fishing vessels were apprehended in Australian waters and only seven were apprehended in 2012-13. So far in 2013-14 twenty suspected fishing vessels have been apprehended. There have been no illegal fishing vessels sighted in Australia's Southern Ocean waters since June 2005.

Senator LUDWIG:

I am asking about a boat that has got wind of the fact that you are turning up in port and it turns away and decides to make a run.

If the vessel was inside the Australian Fishing Zone (AFZ), the Australian Fisheries Management Authority (AFMA) could place a tasking request with Border Protection Command (BPC) to respond. Whether a request would be made would depend on the circumstances of the case. The vessel could be boarded and inspected, and if warranted, other action could be taken as appropriate. Should the vessel not be intercepted it would be open to AFMA to alert other port States so they may inspect or deny port entry.

The fact that the vessel had changed course and decided not to access an Australian port, in order to take on bunkers and victuals, and/or to unload catch, could be seen to demonstrate the effectiveness of the PSMA.

What I am trying to establish is: what assets were available to you? How are they arranged? What are the hotspots? What patrols have been undertaken in the last 6 months in some of those hotspots? And what compliance action has been taken in the last 6 months to deal with the inspections? The main area of concern, as always, is the Southern Ocean—are there assets patrolling the Southern Ocean as we speak?

AFMA is a client of the Civil Maritime Surveillance program coordinated by BPC. BPC uses a range of air and sea surveillance assets to service the requirements of client agencies to

protect Australia's interests against the eight identified maritime threats, one being illegal foreign fishing. The assets available to the program include Customs and Border Protection and Royal Australian Navy patrol vessels, Royal Australian Air Force and contracted aircraft, and other assets, such as commercial satellite imagery. These are deployed on a multi-tasking basis to high risk areas.

Illegal Foreign Fishing risk areas are dynamic in nature due to a range of factors including seasonal variations, market forces, and weather patterns. These areas are identified by AFMA on a weekly basis and provided to BPC for input into their risk based surveillance and patrol schedule. In the last six months, major focal points for IUU fishing have included the Torres Strait, waters north west of Darwin inside the AFZ and in northern waters of overlapping jurisdiction between Australia and Indonesia. During this period 98 boardings of foreign fishing vessels were conducted in Australian waters which resulted in the apprehension of 19 vessels.

For operational reasons, AFMA is unable to comment on whether there are assets currently patrolling the Southern Ocean. BPC is responsible for allocating aerial and surface assets to address identified risk areas and any questions regarding patrolling in certain areas would need to be referred to them.

That is the point I am making. Let us give an example: a recreational fisher taking illegal catch. It could apply. That is why I am exploring the nature of this. You will have treaty obligations to give effect to that as the Commonwealth, not the state, so how will you respond and what will you do?

Recreational vessels in breach of State or Northern Territory (NT) fishing legislation would not be refused port access to Australian ports. Rather, such vessels are subject to specific fisheries compliance procedures and penalties administered by the States and NT.

If you do not think it could be envisaged to be a large tuna boat owned by an Australian national that is taking excess of quota or unregulated catch, what do you do if it gets reported as an IUU?

If an Australian fishing vessel was to be reported as IUU fishing, AFMA would investigate the matter. Australia has the necessary laws in place to meet its international obligations and apply effective sanctions. The *Fisheries Management Act 1991* (the FMA) contains a range of enforcement measures, which could be applied to a vessel reported as IUU. These include warnings, restrictions on the conditions which apply to the fishing licence, a direction to cease fishing, suspension or cancellation of the fishing licence, and prosecution leading to fines and possible forfeiture of catch and vessel.

Senator Ludwig asked that the Questions on Notice be clarified in relation to Article 3(2).

**In particular how would this Article be applied to boats owned or leased by Australians, which exited and re-entered Australian waters?
How is this Article to be enforced in practice?**

The requirements of the FMA that apply to Australian flagged vessels apply equally to vessels chartered by Australian nationals, but not flagged to Australia, fishing exclusively in areas under Australia's national jurisdiction. While generally Australia does not have jurisdiction over foreign boats on the high seas, some offences in the FMA apply to a person (including an Australian national) who uses a foreign boat on the high seas, in breach of a measure adopted by a Regional Fisheries Management Organisation that is prescribed in the regulations. Accordingly, jurisdiction to prosecute for these offences is based on flag State consent.