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30 June 2014

Committee Secretary  
Senate Foreign Affairs, Defence and Trade References Committee  
PO Box 6100  
Parliament House  
Canberra ACT

Dear Committee Secretary

The Institute for Marine and Antarctic Studies at the University of Tasmania is pleased to make this submission, drafted by Indi Hodgson-Johnston and Julia Jabour, to the Senate Standing Committee on Foreign Affairs, Defence and Trade. It outlines several essential points about Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters from the perspective of the risks under-resourcing pose to Australia's sovereignty over the almost 8 million km<sup>2</sup> of contested Antarctic territory. The under-resourcing of ships has implications for security patrols (especially in whaling season), search and rescue capacity, fisheries monitoring and enforcement, Antarctic scientific research, and sovereign presence. Furthermore, the downsizing of the scientific research capability of Australia's marine, Southern Ocean, and Antarctic publicly funded research agencies and flow-on effects to universities is of great concern because of its likely impact on Australia's sovereignty in Antarctica and Australia's influence within the Antarctic Treaty system.

In accordance with the terms of reference, the essential points we wish to outline are:

**1. The International Court of Justice judgment in *Whaling in the Antarctic (Australia v. Japan; New Zealand intervening)* and its implications for Australia's Antarctic interests.**

On 31 March 2014 the International Court of Justice handed down its judgment in this case. The Court determined that the existing Antarctic research program – Japanese Whale Research Program under Special Permit in the Antarctic (JARPA II) – was not 'for the purposes of scientific research'. As a result, all existing permits issued by the Japanese Government under Article VIII of the International Convention for the Regulation of Whaling must be rescinded and no further permits are to be issued for this research program. The ruling will also apply to the Japanese Whale Research Program under Special Permit in the North Pacific (JARPN).

Significantly, the Court did consider JARPA II to be a scientific research program and thus did not characterise JARPA II as 'commercial whaling' per se. It also did not give a substantive definition of what constituted scientific research in relation to the phrase 'for the purposes of...' although there was lengthy opinion on how the individual judges, and ultimately the Court itself, reached their judgment. This has potentially significant implications for Australia in the Southern Ocean since the Japanese Government could convene a new research program, using the judgment as guidance as to its form and substance to ensure it did not breach the determination of the Court.

Japan is unlikely to issue new permits under Article VIII for the 2014/15 season, but would be in a better position to resume special permit whaling the following season. If this does occur, and there are good grounds for concluding that it will, the Southern Ocean will once again become a theatre for aggressive intervention by anti-whaling groups such as Sea Shepherd Conservation Society. If the Japanese authorities were to decide these tactics were endangering their vessels, they could call

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upon Australia's Security Forces Authority (Border Protection Command) for assistance (because one of the regions in which the Japanese fleet usually operates fall under Australia's search and rescue responsibilities).

## 2. Southern Ocean Search and Rescue obligations

Australia's legal obligations are derived from the International Convention on Maritime Search and Rescue (1979) and implemented primarily through the Australian Maritime Safety Authority (AMSA). The Australian search and rescue (SAR) region covers 52.8 million km<sup>2</sup>, a large proportion of which is ocean. Assets are not pre-positioned in the Southern Ocean (see note below regarding monitoring of fishing grounds). When an incident occurs there, it is expensive to coordinate since AMSA relies on existing assets such as those of the Australian Antarctic Division (primarily the icebreaker *Aurora Australis*), Border Protection vessels (primarily *ADV Ocean Shield*), and vessels of other national scientific programs such as China, France, and the United States also operating in the region, to be diverted from their normal operations (including scientific research and base resupply). Maritime SAR is conducted as a community service and there is little chance of cost recovery, particularly if there is no malicious intent to interfere with AMSA operations (eg, through hoax calls). Securing the cooperation of other operators is a vital element of Australia's ability to carry out SAR activities in the Southern Ocean.

Southern Ocean SAR receives increasing public attention when the whaling fleet goes south and when non-governmental organization (NGO) vessels find themselves in trouble. Problems stem from ships unsuitable for Antarctic conditions (including NGO tourist, activist, and fishing vessels) operating in the region, the complexities and sensitivities of cooperation among national operators in the region, and inadequate or misunderstood information about ice and other operating conditions.

The International Maritime Organization's mandatory International Code of Safety for Ships Operating in Polar Waters (the Polar Code) will go some way towards assisting all SAR efforts in the Southern Ocean by prescribing classes of ships and where they can travel (related to the kinds of hazards they might encounter). The Polar Code is still under development and in the first instance it will apply only to vessels to which the International Convention for the Safety of Life at Sea (SOLAS) applies (ie, not fishing vessels or vessels on government service).

In conclusion, the Australian government is under-resourced to meet its SAR obligations and relies heavily on the serendipitous presence of national Antarctic operator vessels in the southernmost sector of its maritime SAR zone. The cost of diverting these vessels to aid SAR activities can be minimised to some extent by increasing information exchange among internal and with external stakeholders, conducting hypothetical SAR exercises, training, and investigation of alternatives (eg, drones) to expensive on-water platforms. The likelihood of the Japanese Government reinstating a whaling program is high and will make increasing Australia's SAR capability even more imperative.

## 3. Australia's management and monitoring of the Southern Ocean in relation to illegal, unreported, and unregulated fishing.

Illegal, unreported, and unregulated (IUU) fishing in the Southern Ocean leads to damage to the Australian fishing industry and the sub-Antarctic marine environment. The focus on the Patagonian toothfish by IUU fishing vessels in the Southern Ocean has led to massive decline in the population

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of the low fecundity fish. The fishery extends into Australian waters. This includes the Australian Antarctic Territory (AAT) Exclusive Economic Zone (EEZ), the Heard Island and McDonald Island (HIMI) EEZ, and the Macquarie Island EEZ. IUU fishing occurs in all these areas.

Recent efforts towards the sustainable harvest of toothfish have led to eco-certification of the licensed (legitimate) operators by the Marine Stewardship Council and Monterey Bay Aquarium. This adds market value to Australian businesses involved in the fishery. Alongside this, however, is the need to continue and increase monitoring, control and surveillance of IUU fishing operations in the Southern Ocean. This is to protect the Australian toothfish industry, as well as the duty to protect the fishery and the environment that arises under various international legal instruments.

The Secretariat for the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) is located in Hobart. CCAMLR manages Southern Ocean fisheries and has been central in efforts to stop IUU fishing. Australian vessels have patrolled the CCAMLR zone in the past, most frequently between 2004 and 2007. This operation, in conjunction with France (which has an adjacent EEZ off its Kerguelen Islands), led to a decrease in IUU fishing activity in the region during that time. However, no Southern Ocean patrol has been carried out by Australia in the past financial year, potentially leading to greater IUU activity that would continue to operate undetected.

CCAMLR has recently formed closer ties with INTERPOL. In 2013, INTERPOL launched Project Scale as part of its Fisheries Crime Working Group. This will increase cooperation among member states of INTERPOL and CCAMLR members, with the issuing of Purple Notices against CCAMLR-listed IUU vessels known to frequent the Southern Ocean. This indicates a greater port-based focus on stopping the trade of illegally caught fish.

We recommend greater asset deployment to re-create and maintain a presence in the Southern Ocean to detect and deter IUU fishing, as well as to support CCAMLR in its cooperation with other state and non-state agencies. Assistance with activities like Project Scale, through diplomatic connections and expertise from various Commonwealth agencies in conjunction with CCAMLR, would assist with efforts at eliminating the global trade in illegally caught fish.

Acknowledging the size of Australia's waters to the south, research into more effective methods of monitoring, surveillance, and control of IUU fishing activities, both at sea and on land, should be supported and implemented. This will assist in maintaining the certified sustainability and reputation of Australia's Patagonian toothfish fishery.

#### **4. Sovereignty and Australia's presence in the Southern Ocean**

The AAT-EEZ has an area of about 2 million km<sup>2</sup>. The claim to the AAT needs an effective and continuous display of authority to remain valid, both on the Antarctic continent and in the adjacent EEZ. This effectiveness, under international law, is measured through an actual exercise or display of authority.

The presence of Australian assets, including vessels and aircraft, in the AAT-EEZ, can assist in fulfilling this display of authority. Activities mentioned in this submission, including capacity for SAR and patrolling for IUU fishing activities, are elements of effectiveness and should be considered as important to the legitimacy of Australia's claim to the AAT.

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It is acknowledged that the new icebreaker announced in the 2014–15 Budget, and the ADV *Ocean Shield*, along with the new RV *Investigator*, will be much-needed additions to Australia's display of presence in the Southern Ocean. The deployment of these assets should be frequent and fully funded at 300 days per year of operations to ensure a consistent presence.

It is recommended that the capacity of the new icebreaker should ensure air-borne (eg, helicopters and radar) and sea-borne (eg, tenders and ice-rating) capabilities. This will enable researchers, search and rescue personnel, boarding crews, and other officials proper fulfilment of their duties in support of the sovereign and practical activities by Australia in the Southern Ocean.

Australia's obligations in this regard stem from, among other sources, the United Nations Convention on the Law of the Sea (LOSC). Article 61 states that countries must ensure proper conservation and management of marine living resources in their EEZs. LOSC Article 62 states: "The [country] shall promote the objective of optimum utilisation of the living resources in the exclusive economic zone without prejudice to [conservation of living resources]". It is submitted that Australia should consistently display its capacity to ensure the conservation and optimum utilisation of the resources of the AAT–EEZ, in line with its obligations under Articles 61 and 62.

This should include a research presence in the Southern Ocean focused on the proper conservation and sustainable, yet optimum utilisation of resources within the sovereign waters off the AAT. This requires that Australia not only continue its Antarctic research, but also its key role in the CCAMLR, of which it is an influential member. To effectively carry out its obligations in the Convention and to maintain and enhance its influence within the Antarctic Treaty system more broadly, Australia must continue to contribute appropriate and proportional funding to Antarctic scientific research.

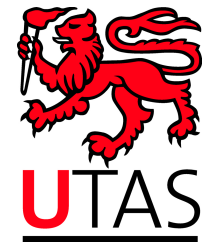
## 5. Australia's commitment to scientific research

Australia claims 42% of the Antarctic continent – about 5.9 million km<sup>2</sup> – and thus has the biggest stake of all the claimants in ensuring the robustness of the Antarctic Treaty system, which acknowledges and protects its right to that claim. Australia's goals for Antarctica include understanding its role in the global climate system and this can be achieved by undertaking scientific work of practical, economic, and national significance. Scientific research expenditure, outcomes, and output are all measures of influence within the Antarctic Treaty system. They also make a tangible contribution towards the administration of the AAT and thus are an effective display of the intent and will to act as a sovereign.

Australia's under-investment in scientific research, however, risks it losing influence within the scientific community active in Antarctic research. Australia is a high profile member of the international scientific community and it has consistently delivered relevant, high impact research that addresses major issues of international scientific concern. Australia interacts with relevant stakeholders such as the Intergovernmental Panel on Climate Change, the Scientific Committee on Antarctic Research, the International Whaling Commission, and CCAMLR (especially its ecosystem monitoring program). For these activities and the corresponding influence to continue, appropriate investment in scientific infrastructure, including marine platforms, is essential.

Much current infrastructure is outdated and thus inadequate, and Australia will be unable to maintain its Antarctic research programs at a suitable level without significant investment in key personnel, innovative equipment and facilities, and large-scale infrastructure such as research vessels. In addition to the attributes described above, these marine platforms must to be adaptable

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to a wide variety of contemporary and potential research activities (eg. through the installation of deck-mounted portable laboratory facilities) to permit rapid response to emerging scientific challenges. Finally, the vessels must be accessible to research scientists and have sufficient funding for research time to enable Australia to continue its high profile scientific research and in parallel, display its sovereign intent towards its Antarctic claim.

Please contact me if you desire any further information.

Yours sincerely

Prof Millard F Coffin  
Executive Director