COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Long-line tuna fishing

CANBERRA

Thursday, 29 August 1996

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chair)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Carr	Mr Laurie Ferguson
Senator Denman	Mr Hardgrave
Senator Ellison	Mr McClelland
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss
	Mr Tuckey

For inquiry into and report on:

The subsidiary agreement between the government of Australia and the government of Japan concerning Japanese tuna long-line fishing 1996 and the agreement on the establishment of the Indian Ocean Tuna Commission.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

Long-line tuna fishing

CANBERRA

Thursday, 29 August 1996

Present

Mr Taylor (Chair)

Senator Carr	Mr Bartlett
	Mr McClelland
	Mr Tony Smith
	Mr Tuckey

The committee met at 9.10 a.m.

Mr Taylor took the chair

CHAIR—I declare open this hearing into the subsidiary agreement between the government of Australia and the government of Japan concerning Japanese tuna long-line fishing. This is the first public hearing of the Joint Standing Committee on Treaties, so it is an historic day. We have had a number of meetings in the privacy of the parliament, but this is the first public inquiry. Let me just say that this reinforces a view put in the parliament in May by the Minister for Foreign Affairs that this committee has been established to allow greater public and parliamentary scrutiny of proposed international obligations as part of the government's approach and reforms to the treaty making process.

We will be holding public hearings on this and a range of things. As Chris Lamb and others from the Department of Foreign Affairs and Trade would know, we intend to have a hearing into, or start an inquiry into, the UN Convention relating to the desertification treaty, which has been signed but not yet ratified. The timing of that is still to be worked out in conjunction with the department and with the minister. This particular inquiry is examining, as I said, the annual subsidiary agreement on tuna long-line fishing with Japan and not the main agreement; it is that bilateral agreement with the Japanese.

There have been a number of submissions, which we have just endorsed as a committee, for public availability. The committee will be visiting Hobart next week and a couple of weeks later we intend to go to Fremantle. We may go elsewhere, but we will certainly be going to Hobart and Fremantle. We will be listening to the views of the tuna industry, the fishing industry generally, conservation groups, state governments, in addition, of course, to the Commonwealth departments represented here today and others. Apart from Canberra, as I said, we intend to take evidence out in the field. We have not decided yet, but we may also be visiting Port Lincoln, but that is still to be resolved.

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CHAIR - I thank everybody here this morning and those who have made submissions. We have received about 36 submissions on this issue. I should first of all, in opening this public inquiry with the Department of Primary Industries and Energy, formally call the witnesses. Can I first of all ask you, in introducing your submission, which has now been formally published by the committee, are there any amendments to the submission put forward by Department of Primary Industries and Energy?

Ms Harwood—No, there are not, Mr Chairman.

CHAIR—Would you like to make an opening statement? If so, can we keep it very brief and then we will ask some questions.

Ms Harwood—Yes, I would, and I will make it very brief. To open up, what I would like to do is give a very simple picture of the key features of the bilateral agreement and to walk you through the contents of our submission. The agreement sets the terms and conditions under which Japanese vessels fish for tuna in specified waters of the Australian fishing zone. The target species are highly migratory tunas which occur both within and outside the Australian fishing zone—the main ones being: southern bluefin tuna, yellowfin, bigeye and albacore tunas.

The agreement has been negotiated annually since we declared the Australian fishing zone in 1979. It is Australia's only current foreign fishing access agreement. There is a significant connection to international fisheries matters, particularly through southern bluefin tuna. Southern bluefin tuna catches by Japan in our zone under the agreement are acquitted against Japan's national quota, which is set by the Commission for the Conservation of Southern Bluefin Tuna, and approximately 10 per cent of Japan's quota of 6,065 tonnes is fished in the AFZ.

I will just walk you through the contents of our agreement. Firstly, it sets out the purpose of the agreement and gives a history to the way the declaration of the zone and the way the agreement has evolved over the last 16 years. It then describes the international issues which surround the agreement, particularly the relevant provisions of the law of the sea and the relationship to international management of fish such as the southern bluefin tuna and the connection to the Convention for the Conservation of Southern Bluefin Tuna. There is a description of Australia's tuna resources and the Australian fisheries which target them.

We have a discussion of port access and the issues surrounding port access which relate to the agreement, and the environmental issues which arise from having tuna long-line fisheries in our waters. The submission then works through the benefits and costs of the subsidiary agreement, including a detailed discussion of the linkages to international regimes, discussion of the benefits that we derived of a commercial nature, in terms of the access fee but also less direct benefits, matters relating to port access and research and issues such as technology transfer from the Japanese fishery to our own industry. The process by which the agreement is negotiated and the consultation that leads up to each annual negotiation is described, and there is a conclusion just summing up the features of the agreement.

In our attachments, we provide the treaty, a chronological record of the basic elements of the negotiated bilateral agreement over the years of its existence and the summary record from the most recent southern bluefin tuna negotiations to give a picture of how those negotiations connect to the bilateral agreement.

CHAIR—Before we get into the specifics of the submission, it would be helpful to the committee if you could give us just a general feel for the scale of fishing operations in Australia, both within the AFZ and on the high seas, but specifically in relation to bluefin tuna. In this one we are dealing with the bilateral agreement with Japan. But are Australian vessels involved in New Zealand? To what extent are our bluefin tuna boats involved on the high seas and what sorts of numbers are we looking at both in terms of the Japanese and Australian? Can somebody address that? It will help us to set the scene.

Ms Harwood—I will start and we might have some additional comments. The Australian southern bluefin tuna fishery, which at present has a quota of 5,265 tonnes, is prosecuted entirely within the Australian fishing zone. The Japanese fishery is much more

widely ranging. I have a transparency if you would like to see the basic range of fisheries.

CHAIR—That may help.

Overhead transparencies were then shown—

Ms Harwood—This gives you a historical picture of where the Japanese have fished for southern bluefin tuna. The fishery spans from South Africa across through the Indian Ocean, south of Australia off Tasmania and across to New Zealand. The Japanese fishery is much more widely distributed. The bulk of it is on the high seas. Only 10 per cent of the Japanese quota is caught in the Australian zone. They also do some fishing in the New Zealand zone.

CHAIR—Where do the Koreans and the Taiwanese fish?

Ms Harwood—The Korean long line vessels fish throughout the Indian Ocean. Their catch of southern bluefin tuna tends to be when vessels are operating in more southerly latitudes in the Indian Ocean. That is the same for the Taiwanese. The Indonesian catch takes place both within the Indonesian zone and outside, and it is a by-catch of their tropical tuna fishery for yellowfin and bigeye tunas.

CHAIR—I know that this is difficult and is of some conjecture—in your submission you mention it and so does the AFMA—but what percentage is the overall worldwide catch?

Ms Harwood—The total allowable catch that is regulated by the commission is 11,750 tonnes. We have to work with estimates of the catch of the other countries, but I understand that the scientific committee of the commission works with an estimate of about 2,000 tonnes for catch taken outside the commission regime. That is the total catch of Indonesia, Taiwan and Korea.

Mr TUCKEY—So the total catch is 13,000 or 14,000 tonnes.

Ms Harwood—That is the estimate.

Mr TUCKEY—I would like to discuss catch deterioration. For instance, I think a figure in the early fifties was 70,000-odd tonnes declining to what we are now talking about. Of the original 70,000-odd tonnes, was that catch from the Australian fishing zone or did it significantly include the high seas?

Ms Harwood—No, there is a significant high seas component. The Japanese fishery developed from the 1950s and peaked, from memory, at about 70,000 tonnes. The Australian fishery developed and I think the peak was over 20,000 tonnes. So at its peak of catch it was both Japanese and Australian fishing that was operating.

Mr TUCKEY—You think that it was significantly a high seas catch. I am very interested in the high seas component because that is basically outside of this treaty, is it not?

Ms Harwood—Yes.

Mr TUCKEY—Has the catch traditionally been and is it currently weighted towards the high seas or within our zone?

Ms Harwood—In the case of the Japanese, the bulk of it has always been on the high seas but there has always been a component taken inside Australian waters. In the case of the Australian fishery, it has always been inside Australian waters.

CHAIR—The important thing is the migratory nature of that particular species. As Mr Tuckey has indicated, it is important to understand the degree of the high seas catch. Am I wrong or am I right in saying that it is a migratory species?

Ms Harwood—Yes, it is a highly migratory species. It spawns in waters south of Java. The fish migrate down the west coast of Australia and move in both directions. In terms of the distribution of fishery, the fish move through the Australian zone and west across the Indian Ocean. But it is clear from tag recoveries, for instance, from young fish taken in Australian waters that they move through the whole span of the fishery off to South Africa, across to New Zealand and south off south Tasmania. So it is a truly highly migratory species.

Mr McCLELLAND—Page one of the national interest analysis states that the Australian fishing industry utilises these stocks—that is, tuna and billfish—in areas near the coast but has not yet adapted to fully exploit the further areas of the Australian fishing zone, so it assumes some limitation on the capacity of the Australian fleet. What mechanisms are available for individual Australian companies who wish to expand their operations to have greater restrictions placed on the Japanese fishing vessels in our local area?

Ms Harwood—Do you mean what mechanisms can local industry employ if they wish to have the Japanese restricted?

Mr McCLELLAND—Yes. At the moment they are not fully exploiting the area, as I understand it. But in so far as some develop the capacity to exploit the area, are there mechanisms whereby the Japanese access can be restricted?

Ms Harwood—Yes, there are. In effect, that is what happens each year. Through the progressive years of the agreement there is consultation each year with the Australian industry as to whether there needs to be further restrictions on the areas of operation and the volumes of operation of Japanese fishery. They have been basically squeezed out

progressively from areas where the Australian industry has developed its operations.

Mr McCLELLAND—I suppose that is something that we will look at. Do you believe the Australian industry has adequate input into that process as to where it may be necessary to squeeze out the Japanese interests in favour of our interests?

Ms Harwood—Yes, I do. There is consultation with industry through the management advisory committees—which are part of the Australian Fisheries Management Authority—with the industry representatives for both the east coast and for southern bluefin tuna, and so the industry has an active input into construction of our negotiating position.

Mr McCLELLAND—Is it the case that they provide the sort of expertise as to what effect the Japanese presence has on their capacity to work in the area? I will frame it this way: is the industry best placed to provide that advice to you as to their opportunities to exploit in the context of the Japanese presence?

Ms Harwood—The industry is, and also the fisheries managers in the management authority give us advice on what the scale of the Australian industry currently is and what the restrictions on the Japanese should be for the coming year.

Senator CARR—So we have a capacity to independently verify the claims made by local fishing companies as well as the Japanese?

Ms Harwood—In terms of where they operate and so on?

Senator CARR—Yes, and their impact. Does the Australian government have the capacity to independently verify those claims?

Ms Harwood—There are records from both fisheries of where they operate, what they catch and their areas of operation so, yes, in terms of understanding what the scale and structure of both the domestic and the Japanese fisheries are, we have information.

Senator CARR—What capacity do we have to actually monitor the adequacies of those records?

Ms Harwood—I think the detail of that is probably more appropriately a question for the Australian Fisheries Management Authority.

Mr TUCKEY—Following on that point, my understanding of the process is that we have a quota which, in the international context, is granted by the commission, that that is for southern bluefish tuna, but the only participants at the moment are New Zealand, Australia and Japan. Maybe you are going to refer me back to AFMA but, within the Australian context, we licence vessels and we have a quota arrangement which is

tradeable. Is that correct?

Ms Harwood—That is correct.

Mr TUCKEY—What then happens if the Australian industry per se wants to expand its activity? What hope have they got if someone knocks on your door tomorrow and says, 'I want to license a new vessel to participate in the industry and I would like to squeeze into some of the areas not being exploited by the Australian industry'? What is our regime internally in terms of, firstly, licensing that particular claimant and, secondly, how do they get quota other than buying it off an existing operator, considering we want them to exploit areas currently not exploited?

Ms Harwood—The Australian quota can be fished anywhere in the zone. So the Australian fishermen who hold an Australian domestic southern bluefin tuna quota can fish that anywhere. Australia is bound internationally to contain its fishery within that catch limit. So a fisherman wishing to enter the southern bluefin tuna fishery in Australia needs to buy or lease a quota to operate in the fishery, but he can operate wherever he wishes to catch that quota.

Mr TUCKEY—So he has a quota, but he has not got a licence for a boat. What happens?

Ms Harwood—I would have to refer the detail of that to AFMA.

Mr TUCKEY—All right. I will buy that. I understand but I am interested in the aspect of how we can grow the Australian industry under these arrangements. What you have basically said is that we can only grow it within our quota, presumably, unless that quota were differentiated by the commission. Is that a possibility? We have the Japanese pressuring us already for an expansion of the overall quota, which is probably unwise. Do you foresee, if we can demonstrate that the resources are available within the zone, that there could be a differentiation in that quota between Japan and Australia?

Ms Harwood—There are two issues at play here. One is that southern bluefin tuna is only one of the species taken under the bilateral agreement. The quotas are set internationally, and they are set in accordance with scientific advice on the status of the stock. They are negotiated quotas between the countries as to who gets how much. So the limit applies to the Australian fishery, and it needs to develop its fishery within that limit.

It is a different picture for the other species; that is, for access to the tuna long-line fisheries off the east coast or off the west coast, those quota arrangements do not apply. There are different regimes there which perhaps AFMA would be happy to detail. So it is just that southern bluefin tuna is only one of the species taken in the zone under this agreement.

Mr TUCKEY—Yes, I am aware of that. The quota deal with the commission is on southern bluefin, isn't it?

Ms Harwood—That is right.

CHAIR—As we speak, how many Australian and how many Japanese tuna boats would be operating within the fishing zone? What is the mix?

Ms Harwood—I would ask Peter Cassells to answer that. We have details on the Japanese boats currently operating.

Mr Cassells—The Australian Fisheries Management Authority can probably elaborate on the Australian side of it better than I can. I understand that in the current access negotiation there have been approximately 10 Japanese boats fishing off Tasmania. There are around 29 off the east coast, and there is provision for 15 on the west coast. AFMA may like to elaborate on that as they do the monitoring of the arrangements, the licensings.

CHAIR—Didn't I read in the submission that there is a maximum of 250? Where does the 250 come from? Is that 250—

Mr Cassells—Licences.

CHAIR—Total licences, is it?

Mr Cassells—Yes. It does not actually infer that there will be 250 fishing in the zone.

CHAIR—That is Australian and Japanese?

Mr Cassells—No, that is just Japanese.

Mr TUCKEY—Again, we get into this demarcation dispute with AFMA, but a question has been put forward about the number of licences as compared with fishing effort. Of course, I have a very large rock lobster responsibility. Positioning devices such as GPS and other electronic assistances have raised the fishing effort capacity gigantically in terms of what a fisherman can achieve. Consequently, we are having a statewide reduction in pots.

The argument of fishing effort as it applies to tuna fishing—in other words, the size of the vessel, the amount of line and, consequently, hooks that it puts out—seems to be a fairly significant factor, notwithstanding, I presume, that in the end the quantity of fish they can catch is controlled by a quota. But how have we looked at this? Is it a sensible approach to just say, 'Here is a licence,' and then someone can have 10,000

hooks or 50,000 hooks under that licence? To what extent do we assess that component of fishing effort in all of this?

Ms Harwood—The fishing in the Australian zone is limited by a quota, in the case of southern bluefin tuna, but also effort. For instance, there is a limit on the maximum number of hooks that can be set off the east coast in particular periods in normal years. The fishery is quite clearly confined by effort and by catch restrictions. The fishing operation itself is monitored to see how many hooks on average a Japanese vessel sets. The hook limit is translated into a number of fishing days for simplicity, but that is based on real information about how many hooks a vessel sets.

Mr TUCKEY—So there is a component of fishing effort within the actual licensing of vessels?

Ms Harwood—Yes. Off the east coast there is a restriction in millions of hooks, which translates into days. Off Tasmania, the limit is on the tonnage of southern bluefin tuna that vessels can catch there.

Mr TUCKEY—Whilst this tends to focus on long-lining, can you make a brief comment for us on what has happened to purse seining and whether it still has a role? Australia was licensing some purse seiners and I wondered where they have ended up. I thought they were the most outrageous form of catching fish because they just do not let anything get away. Has that still got a fundamental operation associated with farming?

Ms Harwood—The way the Australian quota is fished has changed dramatically in recent years. With the reduction in quota, the industry restructured to focus on higher value methods. The amount of straight purse seining for fish for the market does not occur anymore. I gather some purse seining occurs for taking fish to the farms but, essentially, the purse sein surface fishery for canning does not exist in the zone any more in the case of southern bluefin tuna. The Australian fishery has moved to long-lining and, basically, higher value methods targeting the sashimi market.

Mr TONY SMITH—Ms Harwood mentioned before that the quotas were set internationally. I have a series of questions. Who by? What is the basis of those quotas? What is the Australian input? Is it based on the existing regime and then there is an accretion to the existing regime because of what has been caught? What veracity is attached to the existing regime and does it include people like those mentioned before who are not part of the agreement in this area, such as Indonesia, Taiwan and Korea?

Ms Harwood—I will work through those and if I miss anything please tell me. The southern bluefin tuna quotas are negotiated in the commission for the conservation of southern bluefin tuna. That commission comprises Australia, New Zealand and Japan. There are commissioners from each country.

Before the commission meeting each year, there is a scientific committee meeting where the scientists from all three countries work together on a collaborative stock assessment and do their best to come up with a report on the stock status for southern bluefin tuna, the condition of the fishery and its capacity to withstand catches. On the basis of scientific advice, the commission then makes management decisions for the fishery on what should be the total allowable catch and what the national allocations of that quota should be amongst the three parties. In recent years that has been a troubled process because of differences in view between Australia and New Zealand on the one hand and Japan on the other as to what the safe catch from the fishery is or should be.

The other countries are involved as observers. That is, the commission is keen to involve in its works other countries which catch southern bluefin tuna. It invites observers from Korea, Taiwan and Indonesia to attend both the scientific committee and the commission meeting. It is continually encouraging them to join the regime, in the case of Korea and Indonesia, and to cooperate with it, in the case of Taiwan. I am not quite sure what you mean by the veracity of the regime?

Mr TONY SMITH—It is probably not a good way to put it. For example, I do not think anyone really accepts that what they say is taken is taken. There would have to be something extra in each case. Is it taken into account that more than the quota is added on? And is what these other countries are doing also taken into account? Are there estimates made of what they are up to as well?

Ms Harwood—The estimates of catch by the other countries is taken into account in the stock assessment when the scientists are doing their stock projections and analyses with the population.

Mr TONY SMITH—Does it lead to quota setting?

Ms Harwood—Essentially, yes. It is put into the stock assessment and then the scientific advice reflects an assessment that includes those catches and that is the advice that goes through to the commission.

Mr TONY SMITH—There is one example being looked at in Fremantle. All the catch was weighed and it was over quota. Some charges were laid and a fine was imposed. I am just saying that, if you are looking just at an existing regime, are you taking into account that there is a fiddling of the system?

Ms Harwood—There are compliance issues in the fishery. Each country who is a member of the commission is responsible for controlling the catch of its fleet against the national quota. So Japan is responsible for controlling the catch by Japanese vessels in the high seas fishery. In the Australian zone, there is a very tight monitoring of quota catches against quota by the Australian fishery and observers also monitor the catch by Japanese in our zone. There are inspections before vessels set out and when they return. The catch

by Japanese vessels in our waters is monitored very closely.

Mr TONY SMITH—Does that monitoring include the Australian catch as well?

Ms Harwood—Do you mean by observers? No, the catch in the Australian fishery is monitored by other means.

Mr TONY SMITH—I see. So it is a slightly lesser regime than the Japanese one?

Ms Harwood—I would not say that. It is monitoring landings, so when the vessels return to port their catch is monitored.

Mr TONY SMITH—Not every vessel, though?

Ms Harwood—It is. Every catch of SBT by Australian vessels against the quota system is monitored, so I think it is a tight regime that applies to the Australian fishery.

Mr BARTLETT—You mentioned earlier that Korea and Taiwan had been invited to join the convention. Their response then has been one of reluctance, I guess.

Ms Harwood—Korea has shown some interest in joining and a delicate issue in relation to that is what quota they might expect were they to join the commission.

Mr BARTLETT—Presumably we would be beneficiaries of overall stock management if we were to have more of these countries involved.

Ms Harwood—Definitely.

Mr BARTLETT—Is there any way that we can apply some more persuasion to encourage them to join?

Ms Harwood—In the longer term, developments will increase the incentive for other countries to join the regime. That is, there is a recently concluded agreement in the United Nations that relates to straddling fish stocks and highly migratory fish stocks, which essentially creates a regime that strongly encourages countries to be part of the regional fisheries management organisation which is responsible for a fishery and requires that countries that are party to that agreement only fish in that area or that fishery if they are participants in the regime that is controlling the fishery.

That is a longer term obligation in that the UN agreement has yet to enter into force and countries need to be parties to it before they are bound by those obligations. In the shorter term, it entails persistent diplomatic approaches and basically persuasive communication with those countries to draw them into the regime.

Mr TONY SMITH—And are there encouraging signs that that is likely to happen?

Ms Harwood—In the case of Korea, yes. I think that they have expressed quite clear interest in joining the regime.

CHAIR—With the commission itself, what is the global budget for the commission and what is Australia's share? What is the cost to Australia? The secretariat is here in Canberra, isn't it?

Ms Harwood—Yes, the secretariat has recently been established here in Canberra. The total budget is in the order of $600,000 and the Australian contribution is approximately $250,000.

Senator CARR—The national interest analysis indicates that negotiations on draft bilateral agreement have been delayed since November due to an impasse in the commission in setting catch limits and national quota allocations for the SBT. We are advised that Japan would view with concern failure to conclude a bilateral agreement. What, in your judgment, are the consequences for Australia of not concluding an agreement?

Ms Harwood—I will go through the consequences of not having a bilateral agreement in sequence. Obviously, the first would be the fact that we would not receive the access fee, which comes each year with the agreement. There are a number of attendant benefits that the agreement brings that we would lose. For instance, those include valuable information on the fishery itself. By monitoring the Japanese vessels and having the information from them whilst they fish in the zone, we obtain information which is very important in the stock assessment for those tuna fisheries that our own vessels target.

We also lose the capacity to influence Japanese fishing operations. For instance, in handling an environmental issue such as the by-catch of seabirds, we can require changes to fishing operations in the zone or trials of gears or whatever. That might be difficult to persuade Japan to do outside that opportunity that the agreement presents. Yet once they are tried, if they are things that work and are functional for the fleet, they may then apply right across the Japanese fleet on to the high seas. The agreement can provide a place where improvements to fishing techniques on environmental matters can be developed and those can then flow through to the broader fishery.

In the case of southern bluefin tuna, we do get significant information from the fishery of Tasmania that contributes to the stock assessment for southern bluefin tuna. That means that we know better where the fishery is at when we go into the negotiations with Japan each year for the international quotas.

Senator CARR—So effectively you are arguing that it is a question of information base—that we can influence their capacity and we actually know more about what they are doing.

Ms Harwood—We know more about the fisheries themselves—that is, the fish stocks—and we know about the Japanese operations.

Senator CARR—And how the Japanese are exploring.

Ms Harwood—Yes.

Senator CARR—What economic implications are there for Australia?

Ms Harwood—The obvious one is the fee. The cost recovery arrangement that applies to the bilateral fee actually funds a substantial quantity of research on tuna stocks in the Australian zone. That is necessary in any case. In the absence of a bilateral agreement, we would have to find the money to pay for that research from somewhere else.

There are a number of other things that we would lose were we not to have a bilateral agreement. An important one is the fishery's relationship with Japan per se. By having the bilateral access agreement and the negotiations that come with that each year, we have a regular forum for communication with Japan. There are a large number of fisheries issues on which we wish to maintain close communication with Japan. We lose the linkage to the regime for southern bluefin tuna and the capacity to influence developments in that regime—for instance, what happens with quotas.

We would also lose the benefits of port access—that is, use of our ports by Japanese vessels, which brings substantial revenue to our ports. We would also lose the capacity to get very accurate and timely information on technology developments in the Japanese fishery. It is an evolving fishery. Our observers working on the Japanese boats see changes in the technology on the boats that they can pass directly to our domestic industry. For instance, those can be developments that increase fishing efficiency. Other aspects of long-lining can also be transferred across to the Australian industry.

Mr TUCKEY—This is a hypothetical question. If Japan was excluded from the Australian fishing zone, would they be able to catch their quota entitlement on the high sea? We have a lot of submissions from people saying that there is a huge economic benefit in relation to the maintenance industry. How can we attribute or divide that particular economic benefit between the fact that these boats are down here to fish the high sea and want access to our ports, and therefore provide us with business, compared to the fact that they are in the Australian fishing zone, where obviously any economic benefit of repairing ships and things of that nature would transfer to repairing Australian ships if they were exclusively fishing that zone?

There are two questions there basically. Would the Japanese be able to maintain their quota entitlement by just fishing the high seas? Secondly, how much of their high sea fishing effort equates to the repairs and maintenance and other providoring that is claimed is beneficial from the activities within the zone?

Ms Harwood—I understand. I might start by just explaining that the Australian long-line fishery is weather limited, smaller boats fishing for fresh fish. It is physically a different fishery to the Japanese fishery which is large-scale, freezer, long-line vessels. It is not necessarily true that, if the Japanese vessels left, they would be replaced by the Australian industry. If they could be replaced now, then we would presumably have excluded the Japanese.

Mr TUCKEY—That is a bit of a chicken and egg situation nevertheless, isn't it?

Ms Harwood—Not necessarily in that the Australian industry chooses to operate with vessels of a smaller scale and fishing for the fresh fish market. It has had opportunities and experimented with moving into large-scale freezer long-liners but has not pursued that actively to date. There has not been an impediment to Australian industry moving into large-scale freezer long-lining that has been caused by the presence of the Japanese in the zone.

Returning to your question on port access, it is true that the Japanese vessels which seek port access would be some of those which now fish in the zone but there would also be a number of vessels which fish on the high seas. The Japanese could catch the fish that they fish in our waters on the high seas, both southern bluefin tuna and the other species. There are values for them of fishing in the zone in that there are high quality fish in particular areas of our zone that bring a better price on the Japanese market. But they could catch those same species by fishing outside the zone.

CHAIR—Is that $40 million or thereabouts that is suggested as the economic benefit in terms of port access a reasonable or unreasonable figure?

Ms Harwood—I gather it is an estimate of the expenditure by Japanese vessels in port. It is just net expenditure in port by the fleet when they come into Hobart and Fremantle.

CHAIR—I just formally take the opportunity to welcome Mr Iida, a counsellor from the Japanese Embassy, sitting at the back. I hope that later in the day we will be joined by somebody from the New Zealand High Commission.

I ask an extension of a question from Mr Tuckey. My understanding of the submissions is that the Australian fishing fleet, as you suggest, takes the fresh fish approach. In terms of the Japanese, it is the deep frozen fish and they take them in the boats back to Japan. This might be something for the management authority as well. What

negotiations, if any, have taken place in off-loading those catches in Australia and utilising Australian facilities when they go back into catching areas? Do the Japanese have a particular view on that one?

Ms Harwood—There have been developments in this regard in recent years. Fundamentally, the Japanese wish to process the fish on board and take it back direct to Japan. They have expressed no interest in having the fish move via Australia if that is the meaning of your question.

CHAIR—Yes.

Ms Harwood—In the case of some other species, there have been some arrangements which have enabled or encouraged species such as rays bream to be off-loaded and made available to Australian processors where that is of benefit to both sides for that to happen. But, fundamentally, the vast majority of the catch is taken by Japanese long-liners, frozen on board and goes directly back to Japan.

CHAIR—One other aspect of the NIA is it says in part:

The agreement provides Japan with access for Japanese vessels to unexploited tuna resources in the AFZ in return for a significant access fee.

We have a number of submissions suggesting that there are no unexploited fishing resources in Australian waters. Would you like to comment on that?

Ms Harwood—I might ask Mr Caton to comment on the scope of the tuna resources in the AFZ and whether or not there is a surplus, which is the essence of the question.

Mr Caton—These resources of the tunas are very broadly distributed. As Mary mentioned earlier, southern bluefin extends from New Zealand through past southern Australia to Africa and beyond into the south Atlantic.

The other species—the yellowfin tuna, the skipjack tuna, the bigeye tuna and the albacore—are all quite broadly oceanic. As a result there are fisheries on these tunas globally: the Japanese long-line fishery, the purse seine fishery in the Pacific, purse seine fisheries in the Indian ocean. I guess the key issue is to what extent the Australian fishing zone components of these species are localised or independent of the broad oceanic stocks. If you look at tag recoveries, fish that have been released in the Australian zone are taken in the high seas, some as far as the South Atlantic. A bigeye tagged off Cairns was caught in Kiribati south of Hawaii. These species are all exploited. I guess you cannot call them underexploited in terms of extent of the stock. Some of them could be used more intensively—fish like skipjack and yellowfin, in a broad oceanic sense.

In the Australian zone some of those species are not well exploited by Australia—in the regions more distant from the coast, say off north-western Australia, in areas that Australian vessels do not utilise. The Japanese, the Taiwanese and the Indonesians fish them adjacent to the zone. Those species might also extend into purse seine fisheries more broadly. Really you are looking at different types of fisheries here. They are certainly underexploited by small, weather limited Australian boats. There is not an Australian freezer storage vessel fishery that can stay and take advantage of them.

Mr McCLELLAND—You would need that freezer store?

Mr Caton—Basically because of the weather. These Japanese boats can work at latitude 45 degrees south between Australia and South Africa in virtually all weathers. The New South Wales long-line fishery vessels might at times sit in port for five weeks waiting for a window of opportunity at the time when good southern bluefin are off the coast. The '93 or '94 the New South Wales long-line SBT catch was about 300 tonnes. Last year's catch was about 150 mainly because, while there was quota, boats could not get to sea effectively to work. Those sorts of restraints are the major hurdle in the Australian use of these broader offshore resources.

Mr TUCKEY—To take that figure, I know that is only one component of the fishery, but 190 tonnes is a long way short of 5,000 or 6,000 tonnes. Is the Australian industry fully exploiting its quota, and within the Australian fishing zone?

Mr Caton—There has been a major change in the nature of the Australian fishery. It is still changing. Pre-1990 the fishery was predominantly a canning target operation involving purse seining and pole fishing, which are surface operations. With the advent of joint venture long-lining, Australian and Japanese industry combining in a venture using Japanese vessels in the zone, probably half the quota, and in one year more than half the quota, was taken by long-line. The surface fishery was reduced accordingly. In 1992-93 the traditional, surface fishery SBT Australian catch was about 1,800 tonnes, whereas at the peak in about 1982 it was 21,000 tonnes. With the recent cessation of the joint venture long-line agreement, the Australian surface fishery catch has gone back to about 4,500 tonnes.

Mr TUCKEY—By what process? By handlining or purse seining?

Mr Caton—It is predominantly purse seining and pole fishing. In Western Australia pole fishing independently was the way of operating. In South Australia, at the height of the surface fishery pole vessels would keep fish at the surface with live baits the net boats, would surround the schools and essentially it was a combined pole and purse seine operation. Much of the catch now goes to farm cages. A pole boat still holds the fish; a purse seine and pole vessel will set a net around it; the towing pontoon will be brought along side the purse sein, the purse net and towing pontoon will be laced together; and the fish will be moved into the towing cage and then taken back to Port Lincoln. So

now you have, I guess, a focus on fresh chilled SBT and a purse seine farm fishery. That is the way the catching is changed. Most of the 5,000 tonnes in the last year is back into a surface fishery operation with about 2½—nearly 3,000—tonnes of that in farm cages.

CHAIR—Within the AFZ there are those limitations in Tasmanian waters of the 12 nautical miles. In the submissions we have had there is quite a lot of evidence of people saying that that 12 should be extended to 50 as it is in other states. To what extent are fishermen in Tasmania having their voices heard in DPIE?

Ms Harwood—We raised that concern which was emerging in the recent negotiations and put the Japanese on notice that it was quite possible that they would be excluded further out off Tasmania in the next agreement. The concerns do come forward. In the run-up to this forthcoming negotiation AFMA will be consulting with the industry groups, including the fishermen off Tasmania, and we will develop a position together for whether or not there is an increase in inclusion off Tasmania.

CHAIR—What was the initial reaction from the Japanese to that?

Ms Harwood—Obviously any exclusion is a matter of displeasure to them. They do not wish to be excluded from those areas, but they have been progressively excluded from areas where there was competition or gear conflict or where, basically, the Australian industry considered that they were well able to fish that area now.

CHAIR—Did you say that that will be an issue in the next round?

Ms Harwood—It will.

Mr TUCKEY—Clearly the purpose of this inquiry is to test the bilateral agreement against the national interest. I would be interested to even prospectively have a bit better analysis of these claims relating to providoring and ship repair in terms of the high sea component and the Australian fishing zone component because whilst there is a linkage they are also separate. Clearly, in my view, if it were the case that every fish within a thousand miles of Australia was caught by Australian ships there would be a high degree of sales available to our providorers and ship repair based on Australian shipping. Presumably there is a margin after that or the Japanese fishermen would not be down here. I think that is an interesting analysis that should be part of the evidence here. I would like that to be clarified a bit more, even if you do it at a later date.

Having passed over that because I have asked those questions before, could you also expand on evidence within your submission about this pressure at the commission level for some sort of experimental catching? I presume it is going to prove something, but it sounds a bit like minke whales to me and I am a bit concerned about it consequently. Just so I can be enlightened, what is 'Ray's bream'? What sort of fish is it? What does it look like? It has got me bluffed.

Mr Caton—Ray's bream is a type of pomfrit. It is something fairly narrow and fairly diamond-shaped. It is like a bream or a snapper shaped fish.

Mr TUCKEY—So it is like a bream one might catch in local waters, is it? Is it bigger? Why is it mixed up with long-lining?

Mr Caton—It is one of the oceanic surface species. It is excellent in flavour and it has good potential for use in the fresh fish market and for trade in the Tasmanian long-line fishery market. It is eaten by tuna and it eats some of the same foods that tuna eat.

Mr TUCKEY—It is big enough to take the sort of bait that is used for long-line tuna, is it?

Mr Caton—There is a range of species types. They could be from a smaller fish of a couple of kilos up to five kilos. Some are even bigger—the very biggest are 20 kilograms max.

Mr TUCKEY—Okay, thank you. Can you come back on the experimental bit?

Ms Harwood—In the stock assessment for southern bluefin tuna there are a number of areas of uncertainty. This means that it is difficult for the scientists to come up with a clear and defined picture of the actual stock condition. Some of that uncertainty relates to the fact that the fishery has shrunk in both area and time over recent years with the reductions in quota. So many areas that were previously fished, the high seas particularly, are now not fished. The Japanese fishery with the lower quota concentrates in particular areas. So a matter of conjecture is how much fish is there in the unfished areas. Estimates can range from none through to as many as there used to be or as many as would relate to the abundance in the areas that are currently being fished. That is an example of an issue which might be resolved by experimental fishing.

Mr TUCKEY—In other words, there is the experimental fishing argument that additional quotas should be provided to go back into that area to see what is there.

Ms Harwood—In theoretical terms there does not necessarily need to be additional quota. That is, you could take some of the quota from existing areas in the fishery and direct fishing in those unfished areas. The Japanese proposal which is being pushed is to add additional catch into the fishery, to fish it in those unfished areas and to obtain substantial new information in terms of abundance or catch rates in those areas.

What the commission did in its most recent meeting was draw up a set of basic guidelines for experimental fishing to be sensible, scientifically credible, useful, safe, et cetera. Those principles are at the back of our submission. They are attached to the commission's record. The Japanese pressure has been for 6,000 tonnes of additional quota, which is about the equivalent of their current quota, to be fished in areas and seasons

which are not currently targeted by their fleet.

Mr TUCKEY—Are we still inherently cautious about that? It is a device for the purpose of gaining additional quota, not for finding out what is there because that could be done within the existing quota.

Ms Harwood—We are substantially cautious. In the view of Australia experimental fishing could only be contemplated if you had shown that that fishing would not jeopardise stock recovery—that is, that there was enough capacity in the stock to withstand the additional catch if you were going to do it by means of additional catch. We would only contemplate an experimental fishing program if it were scientifically rigorous and genuinely capable of delivering answers to some of the current dilemmas in the stock assessment.

Mr McCLELLAND—Could you place a precondition on that fishing that is acquitted against the Japanese share of the quota?

Ms Harwood—That is not what Japan has been seeking, but the three commission parties have agreed that experimental fishing could only be conducted if it does not jeopardise stock recovery. So that matter has already been aired and hammered out in the commission.

Mr TUCKEY—Basically what you are telling us is that there is no inhibition on experimenting anywhere within the whole area. It is just a question of whether you get extra quota for your experiment. That is the issue, is it not?

Ms Harwood—In the most recent commission meeting there was pressure from Japan in that it was seeking additional catch.

Mr BARTLETT—I want to return to the different fishery approach between Japanese and Australian fishing. Why is it that the Australian industry has not approached the area of deep freeze fishing? Is it partly because of lack of access to Japanese markets or inability to compete with the Japanese in this area? If they did want to venture into this area, would that affect the access that we would give the Japanese fisheries to the AFZ?

Ms Harwood—There have been some moves by the Australian industry into this area. Firstly, there has been a substantial joint venture between the Australian industry and the Japanese industry using Japanese vessels to fish Australian catch. Associated with that is some training and other technology transfer programs to build up skills in distant water long- lining for Australian fishermen. Also, some individual companies in Australia have chartered or purchased freezer style long-liners and worked with those.

I am not sure if you are taking evidence from the tuna boat owners association, but perhaps the sorts of practical problems of moving into that fishery would be a good

question to ask them in terms of what are the commercial and practical difficulties of moving to an operation of that scale and cost as well. A large-scale freezer long-liner is a very expensive vessel.

Mr BARTLETT—So you do not see that it is a result of the competition of having the Japanese boats in there?

Ms Harwood—No, I do not.

Mr TONY SMITH—You mentioned the by-catch before which concerns me a lot. I notice also you state initially here that, while long-line fishing is generally regarded as being a selective and environmentally friendly method of fishing, there are some adverse impacts. I certainly do not recall that being the case when it first came to Australia. It was greeted with outrage.

But anyway, leaving that aside, the thing that concerns me is the albatrosses. You speak here of the use of Tori poles as being mandatory to both foreign and domestic vessels. How effective are they? Have there been tests done in relation to them and do they still pick up seabird life, Tori poles notwithstanding? What about enforcement? If the foreign vessels are going to be required to have them, how is it enforced? Are there penalties for failure to use them?

Ms Harwood—Taking your first question, Tori poles do reduce the seabird by-catch, but they do not eliminate it. There are a number of other aspects of changes to fishing operations that can reduce the by-catch further.

Mr TONY SMITH—Is there any way of eliminating it?

Ms Harwood—I do not know the answer to that question: whether it would be possible to continue surface-set long-lining and not catch any birds at all.

Mr TONY SMITH—You would literally have to feed the line out through the bottom of the boat, wouldn't you? That is the problem. It is as the bait hits the water that they take the bait. It is not once it is 50 metres under the water.

Ms Harwood—Yes. In some long-line fisheries in the Northern Hemisphere that are of a different character, that is, the gear is structured differently, the line is shot through the hull, so the hooks do not appear at the surface.

Mr McCLELLAND—Does that reduce the catch of the seabirds?

Ms Harwood—Yes.

Mr TONY SMITH—Wouldn't there be a way of dropping it over the side with

weights, but with another line attached to it? They fish with two vessels with this long-lining, don't they?

Ms Harwood—No.

Mr TONY SMITH—It is only with one vessel, is it?

Ms Harwood—The line is shot from a single vessel. The use of weighted branch lines, that is additional weight on the line with the hook on it so that the hook sinks faster, is being investigated. If the bait is thawed, then it sinks faster. Basically, the idea is to get the bait away from the birds as fast as possible. There are a number of ways of doing that. The presence of the Japanese in the zone enables us to explore some of those ways and to look closely at the way in which seabirds are caught.

You asked a question on enforcement. First of all, there are inspections when vessels come into port so that they can be assessed as to whether the Tori poles they have are of the accepted design. There are random inspections at sea and there are observers on board. The fleet is monitored in a way which enables us to say whether or not Tori poles are being employed.

Mr McCLELLAND—In terms of this access fee of $3.45 million, who calculated that and what was the basis upon which it was calculated?

Ms Harwood—I might ask Tony Battaglene to just run through how we build up our expected fee that we walk into the negotiations with.

Mr Battaglene—The excess fees are calculated by two groups. AFMA provide the calculation based on the proportion of estimated gross value of production. ABARE then provide several methods to determine an expected fee that can be obtained. One is a similar method to AFMA but it acts as an independent correlation of their fee. There are a couple of technical methods for the other one which we call the production share method and these are what we estimate we can get from the Japanese.

In actual fact, the best possible fee we can get should reflect the difference that the Japanese can earn from fishing within our fishing zone and what they can earn outside it. In practice, the information to decide this accurately is not available, so we have a few quite technical methods.

The fee is a negotiated fee. We take our estimated fees into an interdepartmental committee meeting and then we decide, from the base fees that ABARE and AFMA have calculated, a negotiating range. This takes into account a whole lot of things, including the number of fishing days that there will be, expected catches and exclusions from zones. They will change substantially from the estimated fee, which is a guess, if you like—a

perfect, maximum fee that is obtainable. Once we decide on a negotiating range we go into the negotiations and then it becomes a target for negotiation between us and the Japanese.

The minimum fee that we can ever obtain is something that covers our costs of management and the costs of enforcing the management programs on the Japanese vessels. That gives you very much a bottom fee that you can never go below. As well, there are a whole lot of other benefits. All of those things are taken into account to raise the fee.

CHAIR—In relation to the urgency which was needed for the current agreement, can DPIE give this committee any assurances that we will not be having yet another urgency arrangement next time around? We will be asking the same question of DFAT.

Ms Harwood—I find that a difficult assurance to give in practical terms because I know that we are heading into a very difficult negotiation with the Japanese in the Commission for the Conservation of Southern Bluefin Tuna. All things being well, things may flow smoothly into a negotiation on bilateral access by agreement and we would have time to meet the new treaty procedures in time for the Japanese to commence fishing in accordance with the schedule of the agreement.

The difficulty we face is that if there is any delay in the bluefin tuna negotiations then there are quantum leaps in time as regards when Japan can start fishing. That is, we would soon be moving into the 15 sitting days into February-March next year. That is an issue that we are going to have to deal with at the time. But I cannot see how we could say comfortably that we do not expect there to be any delay when we know we are facing a difficult negotiation.

CHAIR—I do not want to pre-empt what this committee is about to say to the parliament on 9 September in the first tabled report. We have communicated with the Minister for Foreign Affairs on this issue, in particular, and with your minister, as well. Whilst they have both agreed that the urgency arrangement will be avoided, they cannot give any assurances, either. But we will have a bit to say to the parliament on that issue on 9 September. We hope that we will not have to go through the same procedure next time because that is not really what the revised parliamentary procedures are all about.

We understand that there was a loss in agriculture in South Australia of something like 75,000 tuna earlier this year. What impact does that have on the whole issue, on the catch and all the rest of it?

Ms Harwood—There was no initial quota allocated to the Australian domestic fishery as a result of those losses. Basically, they have had to bear the losses associated with that within their domestic quota for this year.

Mr TUCKEY—That basically means the fish are deemed caught before they are

farmed.

Ms Harwood—They are deemed caught when they are taken out of the wild.

Mr TUCKEY—What is the scientific effect of purse seining in taking so many relatively immature fish, which will clearly never reach breeding stage, in that process? Is that a worry? I have always had a worry about purse seining. Most other forms of fisheries let get some get away, probably the less hungry. Once they are in that category and taken away, even though they are farmed and turned into more profitable fish, what is the assessment of that fishing process in terms of the retention of breeding stock?

Ms Harwood—The stock assessment does take into account the fact that the catch is of various ages of fish and the impacts of the relative components of the catch at age. I might ask Mr Caton to expand further, but an important point is that the Japanese fishery itself takes juvenile fish. There is not a stark difference between the surface fishery and the Japanese long-line fishery in terms of the ages they target.

Mr TUCKEY—Just before you answer us, has anyone ever given a thought that we should let some of those fat ones go?

Mr Caton—The issue of taking schools, as distinct from taking fish, has not been studied intensively. The point you raise is important. It is numbers of fish and size of fish that is an issue. Mary mentioned earlier that the peak southern bluefin tonnages were taken in 1970, and I think you have mentioned that yourself. However, the peak numbers were taken in 1982 by Australia. Probably almost as many were taken in Western Australia by pole fishing as were taken in South Australia by purse seining, because in Western Australia they were smaller fish. For the 6,000 tonnes there, the number was about a million. Obviously, it is very important that you look at the age of the fish and the consequent impact on parent stock. The assessments and quotas take account of what the catch composition by age is, so there is some attempt to compensate for catches of small fish, catches of big fish and the effects on the stock dynamics. About letting big fish go from the farms, occasionally there have been sharks and so forth that have torn cages. There was a humpback whale in a cage in South Australia one morning. The Lord knows how on earth that got there - it was quite bizarre. Even so the tuna fish tended to stay in the cage. Perhaps they like the food.

CHAIR—Mary, would you like to make a concluding statement on behalf of the DPIE in relation to the agreement?

Ms Harwood—Thank you. The treaty is one that has evolved over the last 16 or 17 years. There is a strong consultative process that builds up our negotiating position that leads in each year. It involves getting an accurate picture from the current Australian domestic operations and then fitting the Japanese access to be compatible with that. In addition to the access fee, the agreement brings a substantial range of benefits to Australia

which are detailed in our submission.

CHAIR—Thank you.

[10.35 a.m.]

EXEL, Mr Martin Lewis, General Manager, Fisheries, Australian Fisheries Management Authority (AFMA), Burns Centre, 28 National Circuit, Forrest, Australian Capital Territory 2603

MEERE, Mr Frank McFarlane, General Manager, Strategy and Planning, Australian Fisheries Management Authority (AFMA), Burns Centre, 28 National Circuit, Forrest, Australian Capital Territory 2603

ROHAN, Mr Geoffrey Vincent, General Manager, Operations, Australian Fishers Management Authority (AFMA), Burns Centre, 28 National Circuit, Forrest, Australian Capital Territory 2603

STEVENS, Mr Richard, Managing Director, Australian Fisheries Management Authority (AFMA), Burns Centre, 28 National Circuit, Forrest, Australian Capital Territory 2603

CHAIR—Welcome. I just remind you that your submission has been received. Do you have any amendments to the submission made to the committee?

Mr Exel—Yes, and we have provided two copies. We noticed that, in the submission, the photocopy of the map did not come out well so we have given you a decent colour copy. There is also a graph there for Japanese and domestic fleets off the east coast.

CHAIR—But is there a change of substance?

Mr Exel—No, there is no change.

CHAIR—So be it. Mr Stevens, do you have a short opening statement to make?

Mr Stevens—Yes, I do have a very short opening statement. I have cut it down for the purposes of time. Our primary role in AFMA is to provide technical input and expertise to the negotiations that occur each year led by DPIE. We seek and obtain input from our three main tuna management advisory committees in the western, southern and eastern tuna fisheries prior to commencement of negotiations on any issues of concern, on proposed alterations to access conditions or other matters that industry or other participants wish to raise. These committees have members from the fishing industry, state governments, recreational and charter boat sectors, conservation sectors, and scientists. The advice from these committees is passed to AFMA where we then provide guidance to DPIE on any proposed amendments.

AFMA is responsible for all aspects of surveillance, compliance and enforcement of the terms and conditions of the treaty and carries out a combination of daily monitoring

of Japanese vessels through a satellite based vessel monitoring system, random at-sea inspections, pre-fishing inspections of the hold and post-fishing inspections before boats leave the zone. Observer coverage at a level statistically validated by scientists, daily catch and effort logbooks and aerial surveillance combine to make the Japanese tuna long-line vessels significantly enforced. In the past five years we have also had several successful prosecutions with significant penalties for breaching rules and regulations handed down by the courts. This has posed an additional disincentive to any illegal activity by the Japanese fleet.

Management of our resources on behalf of the community requires a sound understanding of the biology of the fish being taken as well as those species ecologically associated with fishing for tuna, such as seabirds. To this end, AFMA places considerable importance on commissioning research into the stocks and related species as a result of Japanese access. As outlined in our submission in 1995-96, $680,000 was provided as a research fund. Additional to this are the indirect benefits of bilateral access. For example, the Japanese Overseas Fisheries Cooperation Foundation provides funding towards development of experimental farming for southern bluefin tuna in South Australia and a number of cooperative research programs are undertaken with Japan, particularly southern bluefin tuna recruitment monitoring programs, to further our knowledge of the stocks.

I will not make any other introductory comments, other than to say that Mr Exel, who is the General Manager, Fisheries for AFMA, will answer the fisheries management type questions which the committee may have. Mr Meere will deal with any of the financial aspects and Mr Rohan will deal with the operations compliance type aspects. I will assist where I can.

CHAIR—Thank you very much. Just before we do that, with your indulgence, Senator Carr wants to put on the record some questions on notice to DPIE. Can I just ask DPIE: do you intend to come back this afternoon again?

Ms Harwood—Yes, that is fine.

CHAIR—You might be able to answer some of these when you come back this afternoon, but if not you can take them on notice.

Senator CARR—I am concerned about the economic implications of this agreement. The agency may also be able to assist in this matter. If they are, I would appreciate their response. It is said that the Australian industries will benefit from over $40 million of revenue through the provision of port facilities. My question relates to the employment levels that are created as a result of the $40 million worth of activity, the number of jobs that are created, the extent to which Australian companies supply the Japanese fleet, or, alternatively, the extent to which there has been vertical integration of Japanese companies in the supply of the Japanese fleet. I understand that there has been some criticism in the tourism industry of the level of Japanese vertical integration in that industry. So I would like to know the extent to which that $40 million produces revenue,

jobs and economic benefit stays within Australia.

CHAIR—Maybe you will not be able to address those when you come back at 2.15 p.m. But could you take those on notice? Thank you. The Australian government did not approve this agreement until 29 May this year and the Japanese government did not approve it until 4 June this year as a result of delays in setting the catch limit. Could you just expand on that? What were the difficulties that were encountered that led to this delay? Was the delay in any way related to the inadequacy of data on tuna population levels or something like that?

Mr Exel—The main reason for the delays was disagreement over the setting of the total allowable catch of southern bluefin tuna. In the commission, depending on which side of the table you sat, you could say that it was due to lack of data. From Australia's point of view, the delay was due to Japan pushing extremely strongly to increase the quota by 6,000 tonnes. We considered that unacceptable and AFMA certainly supported the government position of not acceding to that request, hence the delay.

Mr TUCKEY—It is almost inevitable on a year by year basis that your negotiations almost have to start when the ink is still wet on the paper from the previous agreement. Has any thought been given to having a one off sort of two-year agreement or something like that that would then give you some sort of prospective approach to it? What are the practical aspects of all that?

Mr Exel—The concept of two- and three-year agreements has been discussed a number of times in the commission. Certainly it provides for better planning, from our point of view, for industry as well as for governments. However, Japan in particular is very against longer term quota setting. The main reason for that is that they would rather seek on an annual basis for changes to be made to the quota levels depending on new pieces of information, data, et cetera.

Mr TUCKEY—So they just see it as having more opportunities to argue for a bigger quota?

Mr Exel—You could say that.

Mr McCLELLAND—What capacity does Australia have to genuinely monitor tuna stocks taken by, in particular, the Japanese vessels?

Mr Rohan—There is a two-tier approach adopted. The first is under the observer program where we put people on board vessels. The second is under the compliance program. There are facets of both which, when combined, give us reasonable confidence in the figures that we receive on the catch of SBT in Australian waters. Our surveillance does not extend to the catch of Japanese quota on the high seas.

There are a number of measures within the observer program in terms of the level

of coverage. We seek to achieve a statistically relevant sample across the fleet on both an area and time basis. We try to choose representative vessels. We have an element of surprise in that we choose the vessels that we put people on. Observers keep very detailed records and they also check the records of their catch prior to boarding so they can make comparisons of what they are sighting compared with what has been recorded by that vessel prior to us getting on board.

We have the opportunity also to check the daily records of vessels against our observations. Because vessels are required to give us daily reports on catch and position, we can check those against the result. Observers do a debrief when they get off the boat. If there are any irregularities they are fed through into the compliance area and can be followed up.

Compliance falls into three main categories: boat inspections; that is, pre- and post-fishing inspections for boats which operate under licensed arrangements, area surveillance and monitoring. Monitoring I have referred to as being daily reports, previously radio reports. Now we have moved into a vessel monitoring system using satellite type technology.

The boat inspections are made up of every boat which operates in the zone as it goes through a prefishing inspection in which the hull is assessed in terms of capacity and the fish on board before entering the Australian zone. That can be compared then with spot checks at sea or post-fishing inspections where they are conducted for the fishing around the Tasmanian zone. I guess in all we have reasonable confidence that the figures we are getting are accurate within acceptable levels. There are, however, a number of prosecutions on the record which would suggest that there are some infringements and that we are picking them up.

Mr McCLELLAND—Is there cooperation from the Japanese authorities in terms of your compliance actions if you prosecute?

Mr Rohan—We have not had a difficulty with the Japanese in this sense. Essentially the vessels are in Australian waters and come under our laws. We apply those laws to our standards, not Japanese government standards. Perhaps the only contentious issue is if we suspect a discrepancy in the catch reporting, as occurred late last year—if we need to verify the catch whether we unload in Australia or whether we unload in Japan. For the first time we took action in December last year. We did not unload fish off the boat. We were able to check the weights by moving it from one hold to another.

CHAIR—Could you give us a general outline of what happens when a boat comes off the high seas into the zone? Does it go into port initially? Is it required to go into port initially? What happens if it doesn't? Just an outline of exactly what happens once they come into the AFZ.

Mr Rohan—There is a well-established process or routine under which the

Japanese vessels enter an Australian port, are issued with their licences, go through a prefishing briefing in which they are provided with material that is in Japanese language. We are required to explain the requirements of them in terms of reporting arrangements. The holds are inspected. Because of the period over which this has been operating, the Australian fisheries officers involved have become quite adept at assessing holds in terms of measuring volume and checking the weights in the hold against the manifest. The vessels once licensed are then free to fish within the zone. This applies to all vessels which are fishing for southern bluefin tuna within the Australian zone.

Mr BARTLETT—Just following that up, how frequently have you found that breaches have occurred? Are the penalties sufficient to strongly encourage compliance? Have there been any cases where there has been a repeat of breaches by the same operator, for instance?

Mr Rohan—Not in terms of vessels, I can say. Our records indicate some seven prosecutions since 1990 for various levels of breaches, mainly for discrepancies in the reported weights against our in-port checks. There was also another breach in terms of zone violation where vessels were not where they said they were. Sorry, I have dropped the second part of the question.

Mr BARTLETT—Are the impediments sufficient to really ensure compliance and have there been any cases of repeated breaches?

Mr Rohan—The penalties can be quite severe. Not so much necessarily in fines under our act, but in terms of forfeiture if the court convicts. For example, in the most recent case the discrepancy was in the order of 3.8 tonnes of tuna—not all SBT but of mixed tuna species—and the fines amounted to $4,000, but the agreed bond prior to going to court so the boat could be released, which was forfeited, was $38,000. So the total fine for that 3.8 tonnes was $42,000. I think forfeiture of catch and possibly gear and vessel, which all have been applied at some stage or another, are probably the most significant penalty and deterrent.

Mr BARTLETT—I just follow that up with a subsequent question. Has any estimate been done of the percentage variance there might be over the quotas, say in a particular period over a year—10 per cent, 20 per cent over the quota because of breaches?

Mr Rohan—Certainly within the operations area, I can say we have not projected our findings in the case of individual vessels across the whole fleet. As I have mentioned before, we have been prepared to accept the overall figures as being fairly reasonably indicative of actual catch.

Mr TUCKEY—I just ask you, while you are on this point to indicate the differentiation between checking the commission's overall quota and our obvious ability to achieve compliance within the AFZ. Do we act on behalf of the commission? In reality,

there is only one quota and that is the quota set by the commission, whether it is caught within the AFZ or on the high seas.

What is the process there and, in terms of getting down to detail, what is the weigh-in procedure that is used by these boats? Is it just the skipper's assessment as the fish go in on the conveyor belt or is there a literal weighing process of individual fish that is recorded? Is that record done in some electronic way that would make records easier to peruse? Finally, you mentioned location. There is some reference to GPS positioning in that. Do these boats now carry an identifier or something that allows us to know where they are from satellite tracking?

Mr Rohan—Perhaps I will take those in sequence. In terms of overall quota—and I gather you are referring to the global quota as agreed to by the commission—Australia checks the quota of its domestic vessels—

Mr TUCKEY—By that do you mean Australian?

Mr Rohan—Australian boats and of foreign vessels—Japanese boats that is—fishing within the AFZ. We do not have the capacity to check the catch of Japanese boats taken on the high seas against their quota entitlement and they have a different way of reconciling their quota. Perhaps I am not the best person to go into that.

We do exercise our entitlement in the course of port inspections where a Japanese vessel which fishes on the high seas visits an Australian port. We may check the catch and, if there are any discrepancies, report those discrepancies to Japan. But we do not have the power to act on that in terms of the nature of the high seas component of the catch.

Mr TUCKEY—So only Japan eventually controls the Japanese commission quota.

Mr Rohan—That is my understanding.

Mr TUCKEY—They are the final arbiter of that.

Mr Rohan—As is the case for New Zealand in regard to the New Zealand quota.

Mr McCLELLAND—If you are able to answer this, are you satisfied that the Japanese and New Zealand governments are rigorous enough in their enforcement of their quota?

Mr Stevens—I do not think we would be able to answer that.

Mr Rohan—I will continue. In regard to weights, every Japanese vessel operating within the zone is required to have satisfactory scales. I am not familiar as to whether they are electronic or otherwise. I think they are mainly mechanical scales. The weights are

recorded in the ship's manifest. Because of the value of the tuna species, in particular, quite detailed records are maintained within the ship's logs of the individual fish taken. In terms of identifying vessels, the daily reporting arrangements by radio would give us the declared position of the Japanese vessel prior to the introduction of the VMS system. We have our own backup in terms of the Coastwatch arrangements such that a proportion of Coastwatch's flights fly southern regions and report the positions of all foreign vessels detected. They will identify vessels for us, so we can verify—

Mr TUCKEY—They do not carry a locater beacon, for instance, which would tell you from satellite where exactly—

Mr Rohan—They do now, which was the second point I was going to get to. This season is the first season that they have been required to carry what we call a VMS, a vessel monitoring system, which links the GPS, global positioning system, information to this satellite transponder and reports via satellite communications the position daily. So there is now, I guess, an independent system which advises the location of the vessels.

Mr TONY SMITH—Do you accept that there is a problem with the logbook system? For example, the Australian National Audit Office identified problems there.

Mr Exel—Could you be more specific? In terms of the Japanese vessels, I can certainly answer that straight off.

Mr TONY SMITH—I am just looking here at what the report in 1994 said: 'Logbooks are the main source of information for AFMA fishery managers. Detailed scrutiny of this system in 1994 revealed various problems with the logbook system. AFMA accepts that there is considerable variation in the quality of the data contained in logbooks.'

Mr Stevens—That comment was really made in regard to the domestic fisheries management but Mr Exel can comment on the Japanese situation.

Mr Exel—Geoff did mention before that in terms of the weigh-in procedure, every fish is weighed on a Japanese vessel. That is why we use coverage of observers on a statistical basis. We place the observers and they monitor the entire period. They are usually on the boats for two to three weeks at a time.

Mr TONY SMITH—Are they on every boat?

Mr Exel—No. It is done statistically, basically. Depending on which fishery and which area, the scientists have come up with what is a required coverage in an area plus time basis to give us accurate data. In terms of the completion of logbooks by the Japanese, the compliance in our estimates is very high.

When talking about that prosecution earlier in December last year, that was 3.8

tonnes of fish found in a fish hold that would normally contain 200 tonnes of fish. So you are talking about levels of less than five per cent. We are picking those up with the monitoring program, observers, and the statistical analyses we do between the vessels.

Mr TONY SMITH—This question might be better addressed to the DPI, but is the by-catch taken into account in relation to the assessment of the figure of 3.45 million?

Mr Exel—Yes, the by-catch is taken into account. In fact, from recollection something like 14 species of fish are taken into account in terms of how much is caught, where it is caught and the estimated values of those fish.

Mr TONY SMITH—What is being done in relation to enforcement procedures relating to the by-catch of birds, such as this new process involving Tori poles. Is there an enforcement regime there?

Mr Exel—Yes, the use of Tori poles is mandatory. Again, it is the same with the combination of the observer coverage, the at sea surveillance in terms of overflying vessels and in port inspections to ensure that they are on there. We have moved to make the Tori poles mandatory in the expectation that the work being done by the Australian Nature Conservation Agency to develop a threat abatement plan will build in other mechanisms that can be used to further mitigate any by-catch of albatross.

Mr Stevens—There is not only a compliance process associated with this but also an education and awareness process. Pre-fishing inspections and the briefing that we take the Japanese through endeavour to raise their awareness as to why we are pursuing these measures and the Australian government's view on the necessity for pursuing these measures. So there is an awareness raising and compliance component to the operations.

CHAIR—What is being done outside the commission in relation to some of these surveillance transponders—the VMS systems with Indonesia, Korea and Taiwan? As observers to that commission, is the carrying of that equipment being commended to them strongly or are they already carrying it?

Mr Stevens—The use of vessel monitoring systems and the work being done in Australia are certainly being promoted in international forums such as the United Nations. I think it is being promoted not only as an effective compliance tool but also as a very cost-effective compliance tool. The fact that the Australian domestic industry has taken it up as strongly as it has in fisheries such as the south-east trawl fishery is a pretty clear indication that they do not want to be paying millions and millions of dollars for enforcement when there is a quite effective method such as the vessel monitoring system which can do the job for half the cost. I think there is a reluctance on behalf of some countries to take it up because it can be so precise. But generally Australia has led the way in the development of Inmarsat and vessel monitoring systems. We believe that is being picked up as a very cost-effective way of compliance worldwide.

CHAIR—Is one of the prerequisites for the granting of a licence the VMS capability, or can they go out without VMS? What caveat is there on the issuing of a licence?

Mr Rohan—For this current season they must have VMS. This is the first season in which it has been a requirement. Most of the Japanese boats have had a VMS system, an Inmarsat, a system, fitted. Through the course of ongoing discussions, from this year it is mandatory that the system be on board, operational and used.

Mr Stevens—It is not only for compliance purposes; individual operators can use it for their own conveying of information for commercial use. It is only an extension of GPS.

Mr TUCKEY—It is recalling GPS back up the chain. Can you expand on how a Tori pole works in terms of how it is improving or reducing the opportunity for birds to be caught?

Mr Exel—A Tori pole, in its most basic description, is simply a pole at the back of the boat with a long line travelling into the water with streamers on it. As a Japanese boat sets a long line, there is a person standing at the back throwing the bait out. The line with the streamers on it basically acts as a scarecrow and keeps the birds away from where the bait is until the bait has sunk sufficiently so that the birds will not grab it. That is the easiest way I can describe it.

Mr TUCKEY—It is as simple as that. Coming back to surveillance, I did raise the question of more electronic control. I note we have a question here that is a bit more specific: what advantages or disadvantages do you see if the present logbook system is supplemented or replaced with an electronic reporting system and to what extent would such a system improve the collection of tuna statistics and hence improve the effectiveness of management decision making? I would like to expand on that a bit. From watching television coverage, there is nearly always a conveyor system that seems to take these fish away from the deck into the freezers and, having bought bulk commodities, I am well aware of the ability to literally weigh over that conveyor. I am convinced that, if that is then being fed directly into an electronic system, whilst anything can be tampered with, it does create a record that is not done manually and, therefore, the pencil could be under-weighing every fish just by the physical act of recording. Anyhow, the two questions are written there and I think probably it is worth expanding on my previous question.

Mr Stevens—I will make a comment about real time information. One of the challenges you face in fisheries management is the fact that a lot of the work that is undertaken, whether research, logbook information or whatever, takes a long time before you get it together, synthesise it and get a stock assessment. It can often be six, 12 or 18 months after the event that you get this information and you are able to take or consider some sort of fisheries management action. Anything that encourages the speedier acceptance or provision of that sort of advice is certainly something that we would

support.

Mr Rohan—The main advantage of VMS over radio reports is to obtain data which is less able to be tampered with, is more direct, as you have suggested, and would reduce the avenues for human intervention between the recording and the transfer of the data. In the case of VMS systems, there are also advantages over radios in the transmission of the data. There are two avenues: firstly, getting the data record; and, secondly, getting it from the boat to AFMA. VMS has advantages in both. There are different types of VMS systems.

At the moment Australia is progressing down what we call an Inmarsat C system path which is very much electronic data being conveyed directly from the GPS unit into a system which comes directly to a land base and then by landline to AFMA. The current Inmarsat A system operated by the Japanese does involve some human conveyance from the position recording and catch recording through, basically, a voice mail or fax type system and through an international telephone line type system. It is not ideal for us but it is progressing in the right direction. I guess the key thing here is that we are progressing through an evolutionary process towards the sort of thing that you described where we perhaps reduce the avenues where there may be translation errors.

Mr Exel—I will add two quick points. When we are talking about real-time, we get daily catch and effort reporting and, in terms of its entry and so on, yes, that can delay it by maybe a day, but certainly it is very much real-time for the Japanese fleet. In terms of the use of scales under a conveyor belt, we are actually trialling that at the moment with our domestic fisheries onshore. We have not been able to move to a point where we use scales on conveyor belts at sea where these boats are moving in very rugged conditions. I believe you are going to have a look at a video of the observers later on this afternoon, but the practicality of actually—

Mr TUCKEY—I would have thought electronics would have been an advantage there. The first rule of a mechanical system it that it has got to be level, whereas an electronic system just does not give a damn.

Mr Exel—There are movement compensated scales designed specifically for fishing vessels that are actually used. The problem with the electronic system is not the accuracy of weighing; it is the salt water getting into the electronics and the difficulty that we are having there. We do use—

Mr TUCKEY—We will send you down to South Australia; they are just building a submarine down there.

Mr Exel—Yes, if the long-liners all travelled under the water we would be very happy. What we actually have got are electronic scales that are taken on board by observers to weigh and measure fish. We find they regularly break down and require bringing back to port at great expense to everyone and with little benefit. To date we have

not got to a point where we can do it.

CHAIR—I want to come back to what Mr Stevens said: that it takes a long time for the statistical data to be fed through and, therefore, it does raise a question which this committee will have to address—I ask that DPIE and DFAT take this on board, as well—as to why, in fact, we have to have an annual renewal. What would be the practical effects, for example, of having a two-year agreement or a three-year agreement? What, in practical terms, would prevent that?

Mr Exel—The immediate one that springs to mind is the reduction in flexibility for us to make changes. You will probably note that, particularly over the last five years, there have been changes every year in response to either industry submissions or ecological concerns in terms of seabirds, catch levels—

CHAIR—Sorry to interrupt you. If a lot of this statistical data is being delayed, is it not very difficult to do it on an annual basis? Would it not be better to take it on board and do it over a longer period?

Mr Exel—Maybe I should interpret. Mr Stevens's comments relate to statistical data in terms of global tuna fishery. We do not get Japanese data for their boats fishing the high seas and so on for up to 18 months. For the fishing in our zone we get real-time daily data, so we have very up-to-date information on boats operating in our direct purview. We have—

CHAIR—But one is of limited value without the other, surely?

Mr Exel—No, one is of extreme value because the two agreements are very different. In terms of negotiating Japanese access to our waters and how much we charge for that, we need to know how much they have taken and what the estimated value of that is. Given we get that on a real-time basis, we are able to sit down and have data up to within a week of the negotiations of exactly what they have taken out of our zone to date.

CHAIR—As far as AFMA is concerned, are you saying that anything beyond one year would not be a practical consideration?

Mr Stevens—There are advantages and disadvantages, I guess. As far as our industry is concerned, they would like an opportunity probably on a yearly basis to say that we are able to take up a greater presence in areas which are presently fished by the Japanese fleet and we would like the boundary moved out a little further, thank you. I think the Australian industry would say that they would like the opportunity to do that on a yearly basis.

CHAIR—Surely that could be done by satisfying both? You can have parameters that perhaps would be flexible enough to cover both. I think you can see where I am coming from. A basic question that I am sure all of us have asked ourselves is why do we

have to—and I come back to this urgency situation in practical parliamentary terms—have an annual agreement if it is not giving all the information anyhow to really give us a specific decision?

Mr TUCKEY—I just add to that in terms of the point I made earlier. Would it be in our interest to have at least one two-year agreement and then be negotiating for two years ahead? If you had a two-year agreement and then said, 'Okay, we will revert to annual agreements, but we always have a year gap in operations between the agreements,' that would, firstly, take off this sort of pressure that must result in unsatisfactory arrangements due to the time factor in the end, so there is a little bit more time and, secondly—this point has been made—that agreement would be based on better information.

Mr Stevens—I can say from a totally selfish bureaucratic point of view that we would certainly prefer a longer term agreement. Agreements are extremely resource intensive in terms of the input that has to go into them. They can be frustrating for both sides. From a selfish point of view from our perspective, we would certainly prefer a two-year or a three-year agreement.

CHAIR—Mary, could you just address this two-year agreement specifically this afternoon when you come back?

Ms Harwood—Yes.

Mr Exel—Can I just add to that? Excepting certainly it would be easier bureaucratically, the real difficulty is that you break a nexus between the Commission for the Conservation of Southern Bluefin Tuna and the bilateral agreement. Now that is a very strong nexus and perhaps that is something that might want to be discussed in camera as opposed to in public. That is something I am sure Mary can cover this afternoon.

Mr TUCKEY—I just made a note to myself on that point. The bilateral agreement certainly must represent some leverage in terms of the operations of the commission and the fact that we are in it together. Quite obviously, there will always be that nexus linkage and they should be negotiated together. But it really comes back to that, if there is to be a two-yearly agreement, we would have to comment on the aspects of the commission. I would imagine there is some leverage there because we are giving something. Clearly, it has value.

Mr Exel—Correct.

Mr TONY SMITH—Just two things: one relates to the access fee. Certainly, submissions that we have seen indicate great criticism of that. I do not know whether you can help with this or whether it is really for the other department. Could not the access fee be linked to the quantum of the catch so that, if the catch comes over a certain level, the fee rises in any season? You then have a figure that is structured at so-and-so and, if the

catch and the by-catch increase, could it not be linked to that? I appreciate that you are talking about quotas and it is set to a particular quota.

Mr McCLELLAND—Almost as if you are paying for a tonne of coal.

Mr TONY SMITH—Yes.

Mr Exel—Basically, the access fee is designed to be a charge for Japan using our waters. What we try to do is estimate what they are going to catch each year. To do that we use the previous two years catch and, in effect, average it. The first thing we do is actually obtain a relative estimate of what they are going to catch. As you heard earlier from DPIE, we expect that if you have X restrictions on them they will catch so much fish and the value will be whatever to Japan and we recommend a certain fee level. If they happen to catch more than what we set for that year, the next year it is taken into account in the calculations in exactly the same way. So we are doing it. What we are not doing is setting a base catch level; we are setting an average catch and maintaining a two-year rolling average right the way through.

Mr TONY SMITH—My next question goes back to compliance, having regard to some submissions I have seen. This one has been answered. We now have a mandatory use of bird mitigation devices on foreign vessels; is that right?

Mr Exel—That is correct.

Mr Meere—On all vessels—domestic and foreign.

Mr TONY SMITH—I appreciate that, but now it is foreign vessels as well. My next question relates to the reporting of position, catch and effort data in real-time through the compulsory requirement of vessels to have fitted satellite data transmission and monitoring equipment. Is there any problem with that and the compliance with the shark by-catch code of practice?

Mr Exel—The VMS, vessel monitoring system, already complies with the first part of your question where they do have to provide daily catch effort and position. In terms of the shark code of conduct, I think you were referring to the one in the bilateral agreement: yes, compliance is monitored there through the observers. In fact, we had an additional logbook that we introduced about four years ago. That has now been incorporated into the VMS system so that the shark by-catch is all taken account of. The finning and other practices that we were all made very aware of a few years back have been eradicated from the operations now. Does that answer your question?

Mr TONY SMITH—Yes.

Mr BARTLETT—My question relates to the total cost of the bilateral agreement relative to the access fee. What is the estimate of the costs of negotiation, administration

and compliance and so on? I notice that attachment D to submission 25 from AFMA—

CHAIR—Can I just make the point that that is confidential. If we are going to talk about that in detail we need to talk about it other than in an open hearing.

Mr BARTLETT—Okay, perhaps I will just leave the question at that. What percentage of the access fee is actually used up in compliance and administrative costs? Is there much of a net benefit to Australia in dollar terms?

Mr Exel—I am just trying to figure out a way of answering it without overstepping boundaries.

Mr Stevens—Actually, Mr Chairman, we would prefer to answer those questions in private.

CHAIR—I understand. That is why I jumped in.

Mr TUCKEY—Can I raise just one other question that I put up earlier about the licensing regime for Australian fishing boats. We are aware of the quota and that the quota is tradeable. What is the actual arrangement with licences? In other words, if a person becomes the owner of a quota—and they can trade without that, basically—can they still suffer the difficulty of getting a licence to operate a boat?

Mr Stevens—I will get Mr Exel to check me on this. If you get what is called a statutory fishing right, which entitles you to quota in the southern bluefin tuna fishery, you can use it, you can lease it out, you can sell it or you can take it. What you elect to do with it is your decision. We don't require people to have vessels to own a statutory fishing licence.

Mr TUCKEY—I understand that. There is still the issue of a licence to fish, isn't there? In other words, if you have a quota and you go out there and catch it you have to have a licence.

Mr Stevens—The statutory fishing licence itself entitles you to fish.

Mr TUCKEY—Is that licence per vessel or is it just a right to fish and you can go and catch your quota with three boats or one boat?

Mr Exel—You can catch your quota with as many boats as you like. Once you get your quota, which is now a statutory fishing right, that gives you the right to fish. So there is no restriction on somebody who comes in and says, 'I want to fish.'

CHAIR—I want to ask a question on Christmas Island and Norfolk, I think. You talk about exemptions in your submission. How many exemptions on an annual basis would there be to the pre-fishing inspection? As a result of that, is there a post-fishing

inspection?

Mr Stevens—For the 200-mile zone areas around those external territories?

CHAIR—Yes. In your submission you talk about exemptions given in terms of the pre-fishing arrangement. But surely if you are not going to do something after they finish within the zone it is counterproductive. They may as well have open slather, mightn't they? Or am I misreading the situation?

Mr Rohan—I am not too sure whether I am reading the question correctly, but if a vessel wishes to fish within a 200-mile zone adjacent to our more distant territories, what do we do? I am not aware of us exempting vessels from the pre-fishing inspections.

CHAIR—That is what your submission says.

Mr Exel—Perhaps I can explain. I do understand. There is an element of practicality in what you can and cannot achieve in terms of a vessel, for example, entering where it declares it has nil catch on board. That can be provided an exemption. If it is post-fish inspected, it would mean that any catch on board that vessel is deemed to have come from Australian waters.

The actual pre- and post-fishing is mandatory only for the southern bluefin tuna region, the Tasmanian region. Off the east coast, west coast and external territories it is random. In terms of exact facts and figures, we would have to take that on notice to give you exactly how many we have pre-fished and how many we have post-fished.

CHAIR—It might be quite small in the overall scheme of things, but then it mightn't be. I don't know what the catch would be in the zone around both Christmas and Norfolk.

Mr TUCKEY—Aren't you saying it wouldn't be southern bluefin tuna?

Mr Exel—That's correct. The main reason for the pre- and post-fishing inspections is to monitor the catch of southern bluefin tuna which is under quota. The yellow fin, bigeye—the other species—are not restricted in terms of the total amount of catch. So there is less incentive to misreport it.

CHAIR—Could you take that on notice?

Mr Exel—Yes.

CHAIR—In the 1991 ecological sustainable development policy there was a principle that where there is an element of doubt in the assessment of fish stocks management decisions should favour the protection of fish stocks. AFMA advised that legal opinion indicated that legislation did not give it power to implement such policy. As

a result, the audit office recommended AFMA should clarify this apparent conflict between its statutory objective and its statutory powers with the minister. Can you just explain what action, if any, has been taken since that comment was made?

Mr Stevens—If you get the opportunity to ever read the 1991 report to the Prime Minister, you will see that no-one was able to satisfactorily agree on what ESD meant in fisheries. I guess there are various and wide-ranging views on what the concept of ESD means in the management of fisheries in particular. The whole challenge, if you like, in relation to fisheries is the difficulty of trying to do things on an ecosystem basis when it is just so costly to try to get hold of information necessary to try to make judgments.

It is simply beyond the capacity of industry or government to provide the funding necessary to research the whole interaction between species and the ecosystem. Because of that there has been, as I say, this wide divergence of views in relation to the definition of ESD in fisheries. What we have endeavoured to do in terms of our organisation is to try to establish some reference points which we can use in the management of the more commercially and recreationally important species rather than try to allocate very limited research dollars to try to assess the whole environmental system.

CHAIR—So, in relation to my question as to what progress, you are basically saying not much?

Mr Stevens—There has been progress made. I guess what AFMA has endeavoured to do is to say that, for the more important species, we need an annual stock assessment. To get that annual stock assessment we need to try to fund priority research in a number of areas. For the sorts of projects that contribute to stock assessment and that are important for the commercial and recreational sectors of our fishery, we endeavour to get that work funded to give us some kind of handle on what the state of the stock is. We do that for all our major species. I guess whether that constitutes an ESD approach is questionable and people will have varying views about that.

CHAIR—Okay. Thank you.

Mr BARTLETT—Particularly in relation to the frequency of random inspections of individual vessels, what percentage of the total fleet would be subject to an unannounced random inspection in any one season?

Mr Rohan—I do not have the actual figures in percentage figures, but I can indicate that, in 1995, 23 boat inspections were undertaken at sea, primarily off Tasmania.

Mr BARTLETT—Out of a total fleet of how many?

Mr Exel—In 1995 there would have been around 40 vessels.

Mr Rohan—It depends on the region in which the vessels are operating. There are

different numbers operating in different parts of the compass.

Mr TONY SMITH—They were interceptions, were they? Just unannounced interceptions?

Mr Rohan—They could be one of two forms. There are pre-season compliance plans to check a certain number of vessels and where a vessel is chartered to take compliance officers out to do a specific inspection of selected boats. That may be random or it may be vessels for which we may have concerns, for whatever reason. The other is where we use the Navy's Fremantle class patrol boats which undertake patrols around the coast. If they are in the region we may do ad hoc inspections.

Mr Stevens—Again, we would want to be a little prudent about providing too much information about what our compliance programs are. We are happy to do that in camera, if you like.

Mr BARTLETT—I suppose the question is to determine what chance there is of individual vessels evading effective surveillance—in terms of, say, transhipping and so on—before they come into port.

Mr Rohan—I would suggest that the combination of measures which we have in place—the observer coverage, the planned compliance coverage, plus the Coastwatch surveillance factor by patrol, surface support through the Navy and other—gives us reasonable confidence in that way that there are not major breaches like, perhaps, transhipping or whatever. We work on statistical percentages and averages. You cannot be absolutely certain.

Mr TUCKEY—I have got a question that is going to arise in another way in our next segment. Article 3 of the agreement gives some allowance to these people in terms of their long-line drifting into our waters presumably or into waters that are prohibited. Of course, we read that some of these things are 50 kilometres long, so that could be quite an intrusion. Has any consideration been given to requiring some locater arrangements associated with the dan buoys that are at the end of these lines?

Mr Exel—No is the answer to locater beacons on the lines; they use radio beacons. Yes is the answer to 'do we use that for surveillance purposes to work out where lines may or may not be'. We do actually check line drift and we do get estimates of line drift. I cannot recall the last time it was used. It would be four or five years ago as an excuse for a vessel being inside waters where it should not have been.

Mr TUCKEY—That is the vessel, but I am thinking you could keep your vessel just outside the line and, if the time was appropriate, you could fish within the line to 50 kilometres with a long line. If you have dan'buoys on the line and if it has a radio beacon at each end, there would be a process by which you could be aware that that line was within the zone.

Mr Exel—The problem is, when you haul the line, the boat moves down the line; the line does not come in to the boat.

Mr TUCKEY—So that is a further problem.

Mr Exel—It means that you cannot have a boat sitting outside a closed area hauling the line in because there is 50 kilometres of line there and that is more weight than the boat. So the boat actually moves into the closed area. That provision came from operations off New South Wales which are now totally banned. There is no fishing off the New South Wales region at all.

Mr TUCKEY—It is not of such significance any more?

Mr Exel—No.

CHAIR—Mr Stevens, would you like to make a brief concluding comment?

Mr Stevens—A very brief concluding comment. A number of the questions that have come forward today are about compliance and that is fair enough. I think it is fair to say that the Japanese fleet is very aware of the serious approach taken by Australia in relation to compliance with Australia's requirements within the Australian fishing zone. We regard the level of compliance by the Japanese fleet within the zone as satisfactory. Also, we would say that the amount of effort put in at the pre- and post-fishing inspections is designed not only to reinforce Australia's approach to compliance but also to raise awareness about issues such as seabirds and the reason why we have certain requirements in relation to such issues. I would just leave it at that. The compliance issue is an important one.

CHAIR—Thank you. This afternoon when DPIE is coming back, we might want somebody from AFMA to come back to discuss a little more on the surveillance side, perhaps in camera, if that is convenient. Is that possible?

Mr Stevens—That is fine.

[11.39 a.m.]

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Administrative Building, Parkes Australian Capital Territory 2600

BROWNING, Ms Michaela, Desk Office, Japan Section, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

LAMB, Mr Christoper Leslie, Legal Adviser, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

SERDY, Mr Andrew Leslie, Desk Officer, Sea Law and Ocean Policy Group, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

CHAIR—I remind you, as I did the other departments, that the submission has been published, and the confidential element of your submission as well. But we can deal with that perhaps later this afternoon, if you would be prepared to come back and perhaps talk about that. Would you like to make a brief opening statement?

Mr Lamb—Very brief, Mr Chairman, because I am sure you will have questions. We are very pleased to see that the committee has now started its public inquiry processes, and I think it is a reflection of the significance of the treaty making issue as a whole that you should get so many submissions on a treaty which, had we tried to predict before how many there would be, we would not have suggested would be one that would draw as many as 36 submissions. The fact that there are 36 does indicate the strength of community interest in treaty making as a process.

The submissions themselves have revealed to us and, I am sure, to other departments groups around Australia who can valuably contribute to the consultation processes as future treaties are done; and we have taken note of the comments they have made and we will be making contact with some of them to try to provide them with further information or to integrate them into future consultations.

One of the issues that has come up a couple of times in the points that members of the committee have made so far today has been the question of urgency. I am sure you will have questions on the issue of urgency, but perhaps I could say something initially about that. You will recall, of course, that this particular treaty went into negotiation well before the treaty making processes initiated by the government were announced to the parliament on 2 May. Compounding the problems that we would have had, had we been bound by an absolute 15-day rule, was the fact that, with the election held when it was, it was not possible to get the 15 days to run, no matter what speed had been used on

negotiations at that time.

So I would make one comment now that might be noted, that is, it is terribly difficult in dealing internationally with treaty making timetables that are set by the confluence of a whole range of other issues, including the priorities of other countries, to work to an absolute 15-day rule in every circumstance and to swear that you will always do that unless you can rearrange things at the Australian end to fit into other timetables as well.

What we would hope it might be possible to do in the longer term is to get longer range forecasting of parliamentary sitting times so that we can actually count back a 15-day period with a bit more confidence. It is very difficult for us, for example, to make statements about 1997 until we know what the parliamentary timetable is going to be for 1997. I can assure you, if this does not pre-empt a question you have, that we will do everything we can as a department and as a government to ensure that the 15-day rule is observed. Everything we can, we will do. If it ever cannot be done, then you can be sure that you will get as detailed an explanation of why it cannot be done as you would dream possible.

CHAIR—As you know, I have raised that on behalf of the committee with your minister.

Mr Lamb—Yes.

CHAIR—He has acknowledged the need to reduce that urgency approach to the absolute minimum. Under certain circumstances, it will be unavoidable—this committee accepts that—but I guess it does once again raise what we did with AFMA, specifically in relation to this agreement, as to whether a longer agreement might not be in the interests of both diplomatic and parliamentary and administrative convenience.

Mr Lamb—Yes, it's a fair question. I think it is one that we need to look at in the future across other treaties as well. When the original head agreement was done, it envisaged that there would be annual updates, if you like. To alter that, we would have to amend the head treaty. That is not impossible to do. But if we came to you with an amendment to the head treaty, which reduced the number of times there would be separate things done, I am not sure how that would stand with you if we came to you and said, 'We are going to come to you only every five years on catch quotas.'

We have consulted some other countries that have parliamentary treaty processes to see how they regard agreements of this kind. The Americans have said to us, for example, that they would not regard this as a treaty, that it would not be put to the Senate, and that they would not have cast the head agreement in a way that would have seen this done as a treaty. But because the Fisheries Management Act and the original head treaty preceded the introduction of these procedures, we have one which will continue to return this

agreement to the parliament under the policies announced so far. It is something that we could return to perhaps when the whole treaty making process is reviewed. My instinctive feeling is that we should provide to the parliament as much as we possibly can about all of our international dealings that have a legally binding quality. It is a difficult thing to grapple with; that is the trouble.

CHAIR—That is the point I was making. The Americans might do it a particular way. The Australian people see it differently and that is reflected in this committee's discussions and hearings on this particular agreement. As you have said, if we have had 36 submissions on something to do with the tuna industry, as small as it is, then just think of some of the more macro issues, major policy issues, that are in some of the other agreements, such as the Australia-Indonesia security agreement which we let go through to the keeper for 12 months. It is the government's approach, as you know, to get as much involvement of the public, of individuals, of organisations and of the other two levels of government in the whole process. The Americans technically not seeing this as a treaty is interesting, but I do not think, in the Australian context, that it is important.

Mr Lamb—Indeed. It has another consequence of a limited kind and that is that my understanding of Japanese procedures, which require all treaties to be submitted to the Diet, is that this particular annual agreement is not regarded as a treaty for the purpose of their procedures either. It needs cabinet approval, but it does not need Diet approval, as I understand it.

In these circumstances you could throw up obscure questions of international law about whether it was or was not a treaty if one party regarded it as one and the other one did not. I would leave all that aside. I would say that our commitment remains to present to the parliament everything that we would regard as imposing internationally binding legal obligations on Australia and to give parliament 15 sitting days to study them. If it could not be done, then there would have to a be damned good explanation of why.

CHAIR—Could we ask you to take on notice—and when I say 'notice', I mean fairly short notice because we have to complete this inquiry—a question relating to the practical effects, from a DFAT perspective, of extending this to two years. Could we do that? Is it possible to get a comment from DFAT on that question?

Mr Lamb—Yes, we will certainly take that on notice. But my understanding, as I said, is that the head agreement and the Fisheries Management Act make that impractical without amendment of those.

CHAIR—Well, let us get the answer on notice.

Mr Lamb—We will study that and get back to you.

Mr TUCKEY—There are two or three comments I would like to make on the

discussion you have just had. The first is in terms of the parliamentary program. I am sure you would get unanimous agreement with having that advice as early as possible and for as long as possible—and I do not say that in a sarcastic way. I think you are quite right when you say that there is no reason why the leaders of the houses could not give us the next two years' sitting dates in a fashion that might be extended but that would otherwise apply. I think that is something we should seek to achieve, particularly in this context.

I have one other thought you might like to comment on in the wider sense of recommendations we might make in terms of treaty making and whether there is the opportunity, in treaties of this nature, to have a treaty which would have the full exposure and inquiry that we would have. You could look at the annual review as more of a regulatory aspect in the regulations coming in so that it would not necessarily come back to us because you decided to increase quotas by 1,000 tonnes as being within the treaty.

The treaty sets out the rules and makes allowances. It just may be that taking these sorts of trade deals—if I can use that word in the wider context—would mean that we would not be excluded from expressing concern over conservation measures that there be an increase in the quota. The change in the agreement would be as simple as that. It might be seen more as a non-treaty arrangement, but the treaty would have been given full consideration in the beginning.

Mr Lamb—I think that is very wise. Some other countries have a process where the head treaty is examined as a treaty but things happen to update it. They are very different in form but very similar in effect across different types of treaties. With some treaties an updating is effectively done by the conference of parties, which looks at definitions or levels of contamination. Changes in those can indeed have an effect on the obligations that lie on the state parties but they are not part of the treaty action and they therefore do not have to come to the committee.

What I would look at in the longer term as we reflect on all this is a process very similar to the one that you have described, Mr Tuckey, but perhaps the committee would be notified of these changes. Perhaps they would be available to the committee to take them up if it wished to do so and they would not have to be accompanied by the whole panoply of the treaty action that we are talking about here. That has already occurred in the context of the head treaty or, in this particular case, when the fisheries management act went through parliament in 1991 or thereabouts. We could explore all that very valuably I think.

Senator CARR—It needs to be stated that these matters are controversial. These are matters of great public interest, particularly issues of quotas and the effect on the Australian industry. I would not be subscribing to the view that we could sign off on these things by mere notification that early. I would want to have a very careful look at the implications of what is being proposed.

Mr TUCKEY—That is true. I raised that question in the context of our broader considerations of how the treaty process might proceed in the future. One of the reasons we can constantly quote that the Americans have approved very few treaties is that they call very few of them treaties.

Mr McCLELLAND—That is right.

Senator CARR—That does not make it a good process.

Mr TUCKEY—I agree, but I think once we have gone through the process of approving a treaty you could have a legislative regulatory process on notice. We could give it a tick very briefly if it were a minor event rather than have to have all these delays. I am very attracted to the concept of these types of treaties having a prospective one-year forward arrangement. In other words, if you could have just one extension of the existing arrangements and commence negotiating the next year that would provide a timetable and sufficient time for people to look at it because you would have a continuous one-year buffer. That could be achieved by an agreement which says, 'We agree now not to change the current arrangements for one year but let's start talking about the next year immediately.'

CHAIR—That may have head agreement implications too. It would be appreciated if you could take that question on notice.

Mr Lamb—We will take it on notice. The negotiators like to have the latest available scientific evidence that they have been able to analyse from the previous catches as they come in.

Mr TUCKEY—That would be achieved by that. What I am basically saying with that change of head agreements is that if tomorrow the parties agree to the continuation of the currently approved arrangements for a year on the understanding that they would immediately commence negotiations for new arrangements, whatever they might be for the next year, then that is within the terms of the agreement that they can so agree. But suddenly you are making judgments prospectively by 12 months because you would be making the agreement in the renewal period for the next year.

In other words, we try to get a year ahead of ourselves but, in terms of evidence given previously, a lot of the global high seas information is 18 months old anyway by the time we get it. We should be seeking ways, by use of access to the AFZ, to try to improve that performance. I would imagine that timing would start to become quite appropriate in all those areas if you could get that one year ahead of yourself.

Mr Lamb—Yes. We will take that on notice. Perhaps I should resume on my very brief notes. Bill Campbell from the Attorney-General's Department provided you with a submission. Andrew Serdy, who is with us today, is also an expert on the United Nations

Convention on the Law of the Sea. If you have any questions about that, we could handle them today as well.

CHAIR—In the submissions there have been some question marks about whether it is consistent with the law of the sea. It is pretty clear that it is. If you want to put that on the record and say something about it, then we would welcome it. I recall in the submissions we did have something from the University of Wollongong asking that very question. It is pretty clear that it is consistent, but would you like to just give us a brief comment?

Mr Lamb—We will do that. Martin Tsamenyi and Sam Bateman, I think, concluded very easily and quickly that what was being done was consistent with the law of the sea convention. They said that, at their centre, they like to analyse these agreements just to ensure there is proper concurrence with the wider international law and they are happy and they give it a tick.

CHAIR—It would help if we had 60 seconds of confirmation that it is consistent with the law of the sea.

Mr Serdy—I am perhaps not as much of an expert on the law of the sea as Mr Lamb suggests but I can say that, from my point of view and certainly within the legal office of the department, we would not knowingly conclude agreements of this type if we thought they were inconsistent with the law of the sea. Certainly the view that we have come to is that it is entirely consistent.

Mr Lamb—On that score, of course, the head agreement was done before the law of the sea convention entered into force, but the relevant parts of the law of the sea convention, that is to say all those that cover issues that relate to fisheries, had all been completed and fully agreed before the head agreement was done. So the head agreement was negotiated in the expectation that those parts of the law of the sea convention that relate to fishing, fishing zones, et cetera, would not be changed when the convention itself was finalised.

You might recall that the part of the convention that was amended before it finally entered into force was the part that dealt with deep sea bed mining in part XI of the convention. The other parts of it were not affected. So the head agreement was negotiated by negotiating teams from two countries that intended that those parts that dealt with fishing regimes would be unchanged. It was negotiated to be consistent with those parts of the law of the sea convention.

Mr BARTLETT—In relation to the potential for Korea, Indonesia and Taiwan to be party to a similar agreement, what impact would that possibly have on our agreement with Japan?

Mr Lamb—This is out of the DPIE submission where they refer to the possibility

that other economies might wish to be part of the same arrangement. I am not sure where we stand on that part of the negotiation. Can we take that on notice, please?

Mr BARTLETT—Yes.

Senator CARR—You heard that there was a discussion earlier today concerning the consequences of not concluding an agreement. I presume that consideration has been given to not concluding an agreement. Has that ever entered your mind as part of the negotiation process?

Mr Lamb—Putting it another way: what would happen if there were no annual agreement concluded and there was no regulation of the catch or of the ability of other vessels from other nations to catch fish?

Senator CARR—The question is: have you considered the question of not concluding an agreement?

Mr Lamb—Every year, as the annual negotiations take place, the question of what would happen if we did not conclude an agreement arises, yes.

Senator CARR—And in your judgment what are the implications for not concluding an agreement?

Mr Lamb—They are very similar to the points made earlier by the people who answered the same question. The effects on ports and port access would be difficult to predict. Our ability to get statistics on the catch that other countries are making would be eliminated. There would be no obligation for others to provide us with the statistics we need to measure the resource. We would not get the access fees. There would be a serious economic downside for the ports themselves which is made clearer, than I myself had understood before, from some of the submissions.

Senator CARR—What about our bilateral relationship?

Mr Lamb—And the bilateral relations cost, of course.

Senator CARR—What would they be in your reflection?

Mr Lamb—I am not sure whether Ms Browning wants to answer that question as she is from the Japan section.

Ms Browning—The agreement just provides a focus and a forum in which we can discuss these things. Our concern is just that, if an issue arises in fisheries, it does not impact on the rest of the bilateral relationship. We try and keep all the issues fairly separate. So the agreement is advantageous in providing a forum where these things can

be negotiated harmoniously. Our preference is that the agreement is renewed annually.

Mr Lamb—But we do not negotiate the agreement because our bilateral relationship with Japan requires that there be an agreement. We negotiate the agreement because it is in the national interest of Australia to have an agreement that deals with these fisheries matters, protects the resource against statistics, regulates and organises port access, and does those things. It so happens that it is possible to do that very conveniently in an atmosphere which is conducive to the development of the bilateral relationship with Japan and it all works well from all standpoints.

Mr TUCKEY—Just taking that point, is there an assessment within the department relative to the value of retaining Japanese involvement in the conservation commission of having this access to the Australian fishing zone? The reality of the question is that, if we did not have an agreement, there would be no access to the fishing zone but, of course, access to the high seas is beyond our control. Is there a view that the agreement which gives access to our fishing zone is influential in keeping the Japanese within the other convention and as a participant in the commission?

Mr Lamb—The department's view would be that it is good for Australia to have all our partners associated with the same obligations under international law. But if you are dealing with a fish like the southern bluefin tuna, a highly migratory species, it does not make a lot of sense really to divorce the high seas from the fishing zone. The fish move and they breed in there—

Mr TUCKEY—I understand that.

Mr Lamb—and they travel so you have to have everybody who is fishing as involved as you can.

Mr TUCKEY—But the reality is, and we have had evidence already, that the Japanese could catch their quota as allocated by the commission on the high seas. They must perceive the benefit in being able to access our fishing zone to catch part of that quota. Is it your view that the value of access to our zone is a contributing factor to the Japanese being prepared to participate in the commission as a member and accept its quota ruling, because it is the quota provider, not us?

Mr Lamb—I would have to take a departmental view before I could give you a definitive answer to that. My ordinary understanding of the negotiations I have taken part in across other issues would be that the answer is yes. But I would want to confirm that, if I could, after consultation.

CHAIR—It has been suggested to this committee that, prior to the next agreement, there should be an environmental impact statement involved. Does DFAT have a view on that or do you see that as impractical, unnecessary?

Mr Lamb—You would want to address that question I suppose this afternoon to the people from DEST.

CHAIR—Yes, we will.

Mr Lamb—I do not think that it is an issue on which DFAT would have a view. DFAT would take advice from specialists on that.

CHAIR—All right. The other thing in relation to the future of the commission and commission membership—and this might be something more for DPIE and AFMA—is: if the Koreans and/or the Indonesians and/or the Taiwanese were to become members of the commission, what impact would that have on the quota? Would that mean that Australian-Japanese quotas would be reduced? Would the overall quota change? Or would you prefer that went to DPIE?

Mr Serdy—It is really a question for DPIE, but I can give a broad outline. I am not fully aware of the details, but there is an agreement between the existing three parties to the commission as to how to allocate a quota to new members should they ever come into the commission.

Mr TUCKEY—There is also the fact that there is evidence given that, of course, the artificial quota, if you like, is another couple of thousand tonnes that they are catching outside the commission anyway. Presumably that could be brought to account at the time you were trying to split it up or re-split it up? Instead of talking about 11,000 tonnes you would be talking about 14,000, because that is what is actually being caught.

Mr Serdy—In all likelihood that is what would happen.

CHAIR—There will be a number of questions, Chris, that we should address with you and with DPIE and the management authority in camera this afternoon. If there is no difficulty with that, could you come back at about 2.15 p.m? We will do the in camera private session straight after we finish with DEST.

Mr McCLELLAND—I am not sure who is best equipped to answer this, but in one sense this is a small issue in the sense that it applies to one part of our fishing industry. On the other hand, as Wilson says, it applies to a scarce resource—an increasingly scarce resource—namely, fish or a food supply. How many other areas are like that: where there is an international essentiality, if you like, to preserve a food resource that we are involved in? That may be too general, but this would seem to be an issue which demonstrates the significance of scrutinising treaties such as this which may appear trivial on their face but have broader repercussions for future food supply.

Mr Lamb—Sure. There are three main conventions that deal with endangered species. There is the Convention on International Trade in Endangered Species of Wild

Fauna and Flora 1973, known as CITES, there is the Convention of Migratory Specifies of Wild Animals 1979, known as the Bonn convention, and there is the biological diversity convention, done in 1992. They deal with different aspects of endangerment. They do not necessarily deal with endangered food supply contributors, but there is work done within the ambit of each of those that deals with food supply. CITES, on endangered species, tends to deal with Bengal tigers, et cetera, rather than endangered food supply animals, but it is available to take up those sorts of issues there. Biodiversity, in particular, makes it possible to look at what happens to an ecosystem if you deplete a particular resource. That might not be the fish; maybe it is what the fish eats. You need to take all that into account as well. There is work done within those parameters on that.

The Food and Agriculture Organisation also contributes to these debates and there is work being done on an instrument that may one day become a convention of plant genetic resources that has to do with substantial contributors to ecosystems. We are linked into all those debates and we try to measure the impact of the large multilaterals—if you can describe those things that way—and our own bilaterals as well. We welcome the fact that our bilateral partners, like Japan, pay similar attention to the development of those regimes. I am not sure that that is a very good answer to your question, but—

Mr McCLELLAND—It was.

Senator CARR—I would like to clarify a couple of points you have raised in regard to the benefits of these treaties. Could you indicate to us what the implications are for Australia if access to Australian ports were not tied to this agreement?

Mr Lamb—I presume you would need to have some other arrangement to deal with access to the ports. I don't know enough about ports. I would have to take that on notice. I don't know what the alternative arrangements would have to be if you didn't have the agreement.

Senator CARR—The argument in favour of this treaty essentially is that it provides economic benefits to Australia and it provides and information base in terms of management of the fish stock. As I understand it, article 7 of the agreement requires the government of Japan to make available current economic and marketing information relevant to the operations of their vessels within the zone. Could you give the committee some examples of the types of information provided pursuant to this particular article?

Mr Lamb—We aren't the recipients in DFAT. I'm not trying to pass the buck. Please forgive me if it sounds that way but that information is provided to DPIE and AFMA so far as I understand. They would be the best place to assess its value.

Senator CARR—So you have no information on that particular matter?

Mr Lamb—We are not the functional department that deals with the issue. Our

purpose is to help negotiate the agreement and then the agreement is implemented by the implementing department and the assessment as to whether the information is useful is provided to us: 'Yes, the information is useful. Let's keep that channel open and functioning.' We don't have the resources to do a separate analysis of the information.

Senator CARR—Perhaps we could put that on notice to the relevant department.

Mr Lamb—Mr Serdy has some information on port access.

Mr Serdy—I can give possibly a part answer to your question. If I understand you correctly, you are suggesting that port access could be separated from the wider issue of fishing licences and Japanese vessels would not fish in the zone but would simply come into port. Is that what you are saying?

Senator CARR—I am saying that, if access to ports was not tied to the agreement, what would the implications be?

Mr Serdy—The main implication would be that the element of cost recovery that goes into the fee that we charge for those licences each year would be more difficult to recover. It is one to which Japan was an original party and Australia acceded in 1925.

Senator CARR—So what proportion of the $3.45 million access fee would that cover?

Mr Serdy—I think that is the same question Mr Bartlett put earlier to AFMA. I think it should be answered in the same way.

Senator CARR—Take it on notice to that effect.

CHAIR—We are going to do that in camera because it is commercial-in-confidence.

Senator CARR—The other issue relates to article 3 of the agreement in regard to the enforcement mechanisms for long-line fishing which happens to drift into areas of the zone which they ought not be in. What are the implications for the treaty in terms of using that particular article for avoidance of penalty? Could I get some detail from the relevant department because obviously it would not be this department?

CHAIR—Would you like to make a final comment?

Mr Lamb—It might be handy to say again that we are very grateful for the examples and illustrations we have received from these 36 submissions and we look forward to going through them all in detail. We also recognise that it is not easy for the committee to take us from DFAT as witnesses. Our role in most of these treaties is to

work with the functional department in bringing the treaty to the point that it is completed. Then we put it through the processes to enter it into force. Then it is managed by the department responsible for it. The DFAT role is often quite a mechanical one.

Mr TUCKEY—As a facilitator.

Mr Lamb—That's right. Our role is not necessarily one that needs to extend to knowing the detail of implementation once that job is done.

Luncheon adjournment

[1.31 p.m.]

HUGHES, Mr Neil, Assistant Director, Marine Strategy Section, Coasts and Marine Branch, Department of the Environment, Sport and Territories, 15 Moore Street, Civic, Australian Capital Territory 2600

MORVELL, Mr Gerry, Assistant Secretary, Coasts and Marine Branch, Department of the Environment, Sport and Territories, 15 Moore Street, Civic, Australian Capital Territory 2601

McNEE, Mr Andrew, Director, Wildlife and Marine Management, Australian Nature Conservation Agency, GPO Box 636, Canberra, Australian Capital Territory 2601

CHAIR—I call the committee to order and welcome witnesses from the Department of the Environment, Sport and Territories. I just make the point that your submission has been published. Do you wish to make any amendments to that submission?

Mr Morvell—No.

CHAIR—Mr Morvell, do you wish to make an opening statement?

Mr Morvell—I would just like to make a synopsis of the submission and there are a couple of key points I would like to raise. The portfolio recognises the economic importance of the southern bluefin fishery, and, in particular, the involvement of the Japanese fishing fleet. We also note that past fishery practices have resulted in significant decline in stocks with potential adverse impact on the economic viability of the industry and on the marine environment.

We have become more active participants in establishing the Australian position in multilateral and bilateral southern bluefin tuna fora to ensure environmental considerations are taken into account. We note that one of the major issues facing the southern bluefin tuna fishery is the status of stocks. Australian scientists advise that stocks may be recovering whilst the Japanese scientists paint a more optimistic picture.

We welcome the activities being undertaken in the Commission for Conservation of Southern Bluefin Tuna to resolve the differences in scientific methodologies used to undertake the stock assessment. Whilst we recognise the importance of the commission as a framework for managing the southern bluefin tuna stocks, this subsidiary agreement, which applies to the Australian fishing zone, provides Australia with the opportunity to move at a greater pace to achieve sustainability of the fishery.

An issue of particular concern to the portfolio is the level of seabird and marine by-catch. Whilst some additional measures were put in place to ensure that the Japanese fleet is subject to at least the same level of environmental control as the domestic long-

line industry, we will continue in the relevant fora to minimise the uncertainties, assess the level of risk and, where appropriate, strengthen measures to mitigate environmental impacts.

CHAIR—I will just ask an opening question in relation to the need for environmental impact statements. It has been suggested in a number of the submissions that before this agreement is renegotiated an EIS is necessary. Does DEST have a view on the need for an EIS?

Mr Morvell—The decision about whether an EIS is required is a decision for the minister for resources in the context of his decisions about the activities of the fishing industry. It is incumbent on that minister to determine whether there is a significant environmental impact for which a referral to our portfolio is required. Therefore, the primary decision is that decision of the minister.

CHAIR—When we come back to DPIE in a moment, we will address that.

Mr McCLELLAND—How many tonnes would the Japanese remove from our fishing zone in this five-month period?

Mr Morvell—Tonnes of target fish?

Mr McCLELLAND—Yes. Well, I suppose that is difficult, isn't it, in the sense that you have bluefin and the whole lot?

Mr Morvell—That is correct.

Mr McCLELLAND—On a total basis?

Mr Morvell—I do not think we have that particular figure. I think we would have to take that on notice. Those decisions on the level of the catch are the decisions of the Fisheries Management Authority, and I am sure they have that information. It is not necessarily pertinent to our interests.

Mr McCLELLAND—What would be the possible impact on the environment that this treaty might have?

Mr McNee—This treaty relates to long-line fishing impacts that have been identified both domestically and internationally. Primarily, the most significant environmental concern has been the potential impact of long-lining activity on by-catch of particular seabirds and that has been recognised in Australia under the Endangered Species Protection Act with the listing of oceanic long-line fishing for tuna as a key threatening process for seabirds. There have been 14 seabirds identified potentially at risk from take in

long-lining.

There is also the issue of other by-catch. This agreement is beneficial in the sense that it allows access to data about other non-seabird by-catch. But one of the most important aspects is looking at that data over time to see whether there are changes to species which are not target species, to see whether there is an impact which may be significant.

Mr McCLELLAND—If you did not have this treaty, would it be otherwise difficult to obtain that information?

Mr McNee—I think the evidence is that access to the information is one of the key issues for resolving many of these uncertainties. Certainly, this treaty has been helpful, along with other actions that are occurring, in making available data that perhaps had not been available in the past.

CHAIR—The committee has been told that consideration has been given by your agency for placing southern bluefin tuna on the endangered species list. Is that correct?

Mr McNee—Not strictly in the sense that the process for listing under the Endangered Species Protection Act does not involve the Australian Nature Conservation Agency in the decision until the point at which the minister makes a decision about listing. So what has happened is that, under the act, nominations can be put forward by members of the public or other interested parties. There has been a nomination in the past for southern bluefin tuna as a result of the perceived decline in the population. The process that then goes through is—

CHAIR—Is it just an isolated question?

Mr McNee—No, there has been a formal nomination under the act. The only role that ANCA has initially is in assessing whether it meets the requirements of the act as they relate to the legislation. Then the actual nomination is referred to a group called the Endangered Species Scientific Subcommittee, which then reviews the scientific evidence available and makes contact with other interested parties and agencies who have information relating to southern bluefin tuna. They make a recommendation to the minister about whether a listing should proceed or not.

That nomination was put forward a number of years ago now and the recommendation of that committee to the minister, which was accepted, was that at that time they did not see the need to have it listed as an endangered species under the Endangered Species Protection Act. But they did note that the decline of the stocks from historic levels was significant and they requested a watching brief on it and AFMA have been providing the annual stock assessment.

CHAIR—How long ago was that done at ministerial level? It was the last government, was it?

Mr McNee—Yes.

CHAIR—So it is not an issue which has come before your minister in the new parliament?

Mr McNee—No.

CHAIR—But the issue is kept under active review?

Mr McNee—Yes.

Mr BARTLETT—From your knowledge, can you comment on the likelihood of such a submission being successful?

Mr McNee—Not really. I think the process under which the Endangered Species Scientific Subcommittee assesses that is a broad thing with a collection of data. It is obviously a fairly complex exercise. ANCA's responsibilities relate primarily to the implementation following once ministerial agreement is given to a nomination. Be it for a key threatening process or for an endangered species, the responsibility of our agency is to implement either a recovery plan or a threat abatement plan. But there is a recommendation, which I could make available to the committee, from the scientific subcommittee which would indicate the reasoning behind this.

CHAIR—Could a copy of that be provided to the secretariat? That would be handy.

Mr TONY SMITH—The collateral damage is a serious by-product which does not appear to have been fully addressed. You seem to recognise that in your report. I am particularly concerned about the albatross; being an ex-marine engineer, I loved to have those birds following me. There may not be too many left. It appears that the wandering albatross has actually been so declared in July 1995.

One thing that I noticed also in an Australian National Audit Office report—I think this was a 1994 report—is that in volume 1, page 15, it says:

The Environmental Protection (Impact of Proposals) Act requires AFMA to provide advice to the minister if a fisheries management decision will have, or is thought likely to have, a significant environmental impact. A decision to provide advice can originate only from some form of environmental impact assessment. During audit the ANAO observed there to be no environmental impact assessments of any fisheries management decisions under the AFMA or the former AFS and no referrals to the Environmental Protection Agency.

I take it that in this particular case—correct me if I am wrong—you have not provided any advice to the minister in relation to the possible environmental effects, being the effects as a result of the by-catch, the collateral damage that I referred to? Is that right?

Mr Morvell—The answer is perhaps not straightforward. We do interact with the Department of Primary Industries and Energy and AFMA and we have regular consultations, so there are regular fora in which we discuss the potential environmental impacts. The first decision that has to be made, though, is that with all the information available the resources minister must make that decision about whether it is environmentally significant in terms of making the decision. The limiting factor from our portfolio's point of view is that the amount of information available is something that we are not privy to; we do not have all the information that comes to the Fisheries Management Authority for them to make their decisions.

Mr TONY SMITH—Is there a document perhaps that has gone from that authority to the minister that you have not had anything to do with?

Mr Morvell—I would imagine there are certainly recommendations to the minister about decisions that he has to make, yes.

Mr TONY SMITH—And referable to the environmental impact of the fishing proposal?

Mr Morvell—I would imagine that they do contain statements about their assessment of the level of environmental impact.

Mr TONY SMITH—How would we get hold of that sort of documentation?

Mr Morvell—In the first instance, it is something you would have to raise with the Fisheries Management Authority or the Department of Primary Industries and Energy.

Mr TONY SMITH—All right. Secondly, do you see a role as part of the entry fee being set aside for research into the elimination of the collateral damage; in other words, the designing of fish management practices that not just contain it but eliminate it? At the moment, is there any research? Should there be? I would suggest, with respect, that there should. And where would the funds come from if they are not going to come from that fee?

Mr McNee—Firstly, it is my understanding that moneys that have been part of the access fee historically have been used, along with research moneys from the Australian Nature Conservation Agency, to look at both the status of albatrosses and other seabirds and into mitigation measures specifically, because it is the mitigation measures that are seen as a key manner of reducing the by-catch to a level where those populations can sustain themselves. That work has been undertaken.

A considerable focus of that work has been resolving and improving things like Tori lines, which we saw briefly on the video before, looking at mechanisms for delivering bait beyond the reach of birds or more quickly so that it sinks, looking at the use of thawed baits which sink more quickly and therefore are not available for as long a period on the surface, and looking generally at things. Some other countries are looking at research into modifications to actually set lines underwater. I guess the main problem is birds floating around on the surface taking the lines, and there has been some research.

The key step which will have a significant impact is that, because of the listing of oceanic long-lining as the key threatening process under the endangered species protection act, that sets in train a process of consultation and coordination between all of the interested parties. ANCA is now initiating that with the industry, the regulatory bodies and other interested parties to look at developing mechanisms to mitigate the threat to seabird species and reduce it to an acceptable level. The outcome of that will hopefully be a plan that will have the support of all interested parties to reduce it to an acceptable level.

Mr TONY SMITH—I do not like the use of the words 'acceptable level'. I think one should be going for the optimum elimination of it.

Mr McNee—It is the term that is applied in the legislation.

Mr TONY SMITH—Reading between the lines of what has been stated in the report, I gather that you would welcome more people monitoring the situation. One would imagine that the element of callousness, if it is around, would be less obvious if someone was there then if someone was not there.

Mr McNee—One of the key issues will be data and the importance of data to the process, and understanding whether the mitigation measures and the degree to which they are effective in mitigating the threat is particularly important.

Mr McCLELLAND—Would there be any benefit in including those mitigation effects in the terms of the treaty itself—in other words, requiring the parties to implement those protections?

Mr McNee—In essence, the first of those which has applied to the Australian industry for the last few years is the deployment of Tori lines for bird scaring devices. That is a very positive part of the agreement. Generally for long line fishing within the EEZ there is now the requirement to deploy Tori lines whilst fishing there. It is likely as we move through the development of the threat abatement plan that in cooperation with other parties other mitigation measures may be identified that would allow us to deal with the threat of by-catch to seabirds. We would envisage that those would become a part of any future agreements.

Mr TONY SMITH—I take it that the fishing birds do not provide a threat to the

catch itself when it is being recovered. Is that the case?

Mr McNee—I am not sure. There is a view that for every bird caught on a hook as it goes out it is not available for fishing. I think it is one of the areas that we might be looking at in some detail in the threat abatement plan. There are economic impacts associated with capturing seabirds in addition to the population of the seabirds. The development of a threat abatement plan should effectively address the interests of all the parties, both conservation and industry. There is some data which suggests, particularly with bait throwing devices and the like, that the delivery of the bait is better and more hooks go in a baited sense. So it is possible that mitigation measures may have significant economic or operational efficiency benefits.

Mr BARTLETT—If monitoring shows that in the medium term the effects of mitigation on the impact on bird life is not acceptable, will a recommendation be made that long line fishing stop and that the treaty not be renewed?

Mr McNee—I would not like to second guess the process. What is clear is that mitigation measures are available that can significantly reduce the risk of by-catch of seabirds. The issue is ensuring that those measures can be deployed in the way that optimises the benefits for reducing bird by-catch while not minimising any economic impacts.

Mr BARTLETT—If investigation shows that the numbers of those birds are still declining and that they are seriously under threat, is it likely that a recommendation will be made that the treaty will not be renewed?

Mr Morvell—I think what would happen is that that information would be passed on to the scientific assessment committee that would be considering any listing under the endangered species act. In that context the recommendation would then still come out of that scientific assessment. So certainly, if more information became available which indicated a change in the status of the species, particularly if it was on the decline, given that the committee has this issue under review on a regular basis, the likelihood of the committee recommending that it be listed would increase, and then that would trigger the process of a threat abatement plan being put in place, which the industry and the government would have to deal with in the best way available to them.

Mr McCLELLAND—Is there any research showing the number of birds likely to be caught on a particular roll-out of line?

Mr McNee—There has been some research based on a number domestically from Japanese long-lining vessels and also some international work available which shows the rate of catch, and then there are estimations of the total catch and the potential impact. One of the key issues is the bringing together of albatrosses particularly because they float in and out of the Australian EEZ and migrate around the southern oceans. You need to

have an understanding of what is happening with their populations—and you can only really census them where they breed—and of where they are taken out in particular systems. But there is some data available. Some of it is better than others.

Mr McCLELLAND—Can you give a figure as to each roll-in of line—how many birds would be likely to be caught on hooks?

Mr McNee—I cannot recollect now, but a number of different estimates have been generated using different methods from different data sets which I would be happy to make available to the committee.

CHAIR—What about other marine life in terms of the catch—marlin and others? Has some research been done in that area and the degree to which it is mixed in with—

Mr McNee—As I said earlier, one of the benefits of this agreement is that it does make some data available which allows you to start to look at the by-catch of non-target species. The ecologically related subcommittee of the Commission for the Conservation of Southern Bluefin Tuna has identified the need to analyse that data to look toward any change over time in the composition of those non-target species, to see whether there is potentially an impact. This is significant because in a number of cases the by-catch of non-target species significantly outweighs the catch of the target species.

CHAIR—In terms of the by-catch, have you got a feel for every tonne that the southern bluefin is landed what percentage there is of other—

Mr McNee—There is a recent publication by the Bureau of Resource Sciences that provides some data that looks at the catch per unit effort of non-target species, and there is a considerable number of other species—

CHAIR—Would any of those be endangered species?

Mr McNee—At this point I do not think any of those are endangered; they are certainly not listed under any Australian legislation. But there is a possibility through time under various other international things that are occurring, or as we understand better any impact. That is more a function of the fact that we just know what is caught at the moment; we do not have a very good understanding of what that means ecologically.

Mr TONY SMITH—I just get the feeling that the department has not really been as involved in this process as it might have been. Do you wish to comment on that?

Mr Morvell—It is not true to say that we are not as involved as we would like to be. We are as involved as our resources permit. There is always that factor in any level of government; the effort that you put in is somewhat constrained by the resources you have. We have a very open arrangement with DPIE and AFMA and I think our involvement is

very high level in terms of the decisions about the southern bluefin tuna. We have participated in the meetings of the Australian delegation to the Commission for the Conservation of Southern Bluefin Tuna. What is perhaps coming through is that the level of our ability to advise governments and other departments is constrained by the fact that we do not have the information that we would like to have.

Mr TONY SMITH—Have you communicated that to the relevant minister on this particular issue?

Mr Morvell—We have. In fact, in a broader context of the government's decision to proceed with an oceans policy, that in fact is one of the issues that has come forward from within government, from industries and from the broader community. The biggest factor limiting our ability to provide a proper policy context for any decisions in the marine environment is that we do not have sufficient information about what is out there, and the cost of getting the information through scientific processes or the incidental information that comes through monitoring programs such as the one that we viewed a few minutes ago on the video is very high and at some point there is a limit to how much information you get because of that limiting factor. So there are some real constraints on any agency of government and industry and the community more broadly deciding where the level of risk is without having proper information.

CHAIR—On Tony's point about the albatrosses, in the record of discussion there is a requirement, a request to the Japanese to provide the carcasses for research purposes. Is that happening?

Mr McNee—That program is managed in essence by AFMA—

CHAIR—You surely would be involved in that too? It is something that you would have more than a casual interest in?

Mr McNee—We certainly have an interest in the data that would derive from it, and that has been made fairly clear. In fact, we are quite strongly involved in the ecologically related species group of the commission, and one of the key actions that have been identified by the commission is to identify where those samples are and, in fact, to analyse them so that they become available.

CHAIR—Do you have a final comment you want to make?

Mr Morvell—I think we have probably covered the major issues. I think perhaps one point is that, whilst we have raised a few concerns and I have tried to elaborate why in large part it is data restriction that causes a lot of our concern, we do believe this particular treaty has taken us forward from where we were. As we go along over the years and this agreement and the work of the commission is enhanced, we would like to see a strengthening of those environmental controls, but we need the information to do that and

certainly we are actively involved in that with those other agencies.

CHAIR—Thank you very much.

Short adjournment

[2.04 p.m.]

BATTAGLENE, Mr Anthony Nicholas, Director, Fisheries Programs, Fisheries and Aquaculture Branch, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory 2601

CASSELLS, Mr Peter, Assistant Director, Fisheries and Aquaculture Branch, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory 2601

CATON, Mr Albert Edward, Tuna Biologist, Bureau of Resource Sciences, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory 2601

HARWOOD, Ms Mary, Assistant Secretary, Fisheries and Aquaculture Branch, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory 2601

WARD, Mr Peter James, Fisheries Biologist, Bureau of Resource Sciences, Department of Primary Industries and Energy, John Curtin House, 22 Brisbane Avenue, Barton, Australian Capital Territory 2601

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

BROWNING, Ms Michaela, Desk Officer, Japan Section, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

SERDY, Mr Andrew Leslie, Desk Officer, Sea Law and Ocean Policy Group, Department of Foreign Affairs and Trade, Administrative Building, Parkes, Australian Capital Territory 2600

CHAIR—I point out that you are all still under oath or affirmation. Mary, would you like to start with some of the issues that you put down and just highlight what they are.

Ms Harwood—I will take them as they arise, if that is okay. You asked for some detailed information in relation to employment levels, jobs and the nature of benefits retained in Australia through access to our ports. We would like to take that question on notice and prepare a detailed response for you.

CHAIR—That is Senator Carr's question.

Ms Harwood—The second was the discussion on why we do not renew the agreement for, say, a two- or three-year period; why is it negotiated annually? There are a few issues that I would like to bring up there. The first is the nexus to the commission for the conservation of southern bluefin tuna. Each year, until the commission has agreed on a total allowable catch and national quotas, at the point when we have agreed on quotas, Japan is then bound by its national quota. At that point, we agreed to let Japan fish part of that quota inside our zone as well as to catch a range of other species. So I bring the committee's attention to the fact that were we to give agreement to access in years ahead, we could be in the position of agreeing to provide access to Japan in the absence of cooperation by Japan in the international regime. That is not something that we wish to do—that is, we only wish to provide access to our waters if the countries that fish in our waters are abiding by regimes to which we are both a party and the interests of sustainability and responsible control of that fishery are covered.

Secondly, things move fast in the Australian fishing industry and in dealing with problems in that. For instance, if you think about it, we may find better ways to mitigate by-catch, we may find things that we wish to implement in the Japanese fishery at fairly short notice and were we to agree to a longer term access provision we might find it difficult to implement that. Also, there can be rapid developments in the domestic fishery where we may wish to exclude the Japanese year to year—and we do; each year there are changes to the access areas and conditions. So that flexibility to reflect the changes in the domestic fishery and changes that we may be able to implement in long-line fishing generally needs to be there.

There is definitely an attraction to having a long span of time embraced by these agreements, but it is linked to the commission. If we were able to get a longer span of agreement in the commission, say we agreed to a two- or three-year frame for quota in the commission, perhaps we could be looking at a longer term arrangement under the bilaterals. But I presume we would wish to preserve the right to make annual changes to the terms and conditions of access.

CHAIR—So what you are saying is that there is scope to do something about it, but it would have administrative difficulties associated with it? Is that what you are saying?

Ms Harwood—I think it is more than administrative. I think there are major strategic issues in the way the international fisheries are managed that are affected by the timing of the bilateral and trilateral agreements. So there are quite significant matters that affect it.

CHAIR—Chris Lamb from DFAT has already undertaken to take that one on notice. We might ask the same of DPIE. Could DPIE make a written comment on that issue. Obviously you will want to tick-tack with DFAT and AFMA on it.

Mr McCLELLAND—Is there a mechanism by which a clause could be added to this treaty? Say it was over a two-year period, that the extension into the second year was conditional upon the other bilateral agreement that you were referring to being implemented on Japan's part. So, in other words, you have a conditional extension into the second year, and, similarly, that there be a clause in it that any by-catch mitigation measures, as approved by the commission, would be adopted by the parties in the course of the agreement.

CHAIR—That will also pick up Mr Tuckey's question; that is the point he was inquiring into as well. So if you could do that, give a little more detail in writing, we would be interested to have that.

Ms Harwood—I just have a comment on the list of things which affect the timing of the agreement. I think a very important one would be the commercial considerations. Tuna prices change markedly between years. A core element of the agreement is the access fee. Neither side, I suspect, would be interested in being locked into an access fee too far down the track, for obvious reasons.

I think we might find—and we are happy to analyse this further in our submission—that the issues which are at the heart of what the public and the government take interest in are the issues that are hardest to predict—the conditions we might place on it, the controls that apply to the fishery and the cash we receive from having the Japanese in the zone.

CHAIR—We might take that up in the private hearing after 2.15 p.m.

Ms Harwood—Just moving through these issues. The recovered component of the access fee encompasses a substantial quantity of mitigation research on seabird by-catch. So there is direct funding of work on albatross by-catch from the access fee.

You asked what would happen if Korea and Taiwan joined the commission in terms of quota shares. I could just briefly describe what has been discussed on that issue so far within the southern bluefin tuna commission. It is a difficult issue and, obviously, the actual allocations would be the result of negotiation on the floor of the commission when people were parties to the commission as equal players on the field.

The view of the existing parties, which has been already conveyed to the other countries, is that Australia, Japan and New Zealand have all suffered substantial reductions in their fisheries over the last few years—that is, they have applied major quota restraint and the calculation is that they are now fishing 41 per cent of the volume of fish that they were before quotas were effectively applied—so that, were other countries to join, there should be some matching reduction in their catch. Obviously, this is a sensitive issue. But for them to expect to receive their current catch does not sit well with the level of constraint that has been applied by the existing players. But this is, obviously, going to be

a core element of the negotiation both before and after they join the commission.

Mr McCLELLAND—You can usually get someone to do something only if there is a 'what's in it for me?', can't you?

Ms Harwood—Exactly. I think the commission is well aware of that.There is a record of discussion in the subsidiary agreement that relates to access to market information. That record of discussion dates back quite a way. There have been times in the past when there has been specific information we wanted from the Japanese or we wished to just make sure that we had a transparent view, for instance, of the tariffs on imported quota or issues of that sort.

At the moment we have not been seeking particular market information, but each year we request that the record of discussion remains alive in the agreement so that we are able to bring it to life if we wish to if there are specific issues we wish to cover. There are a number of records of discussion attached to the agreement that have that character—that is, we wish to have them retained each year in the subsequent subsidiary agreements. Those were the main issues that I picked up on the way through for this part of the hearing.

CHAIR—AFMA, is there anything we asked you to take on notice?

Mr Rohan—The main question I took away with me was the issue of the costs of management and administration, and what was the residual benefit to Australia from the arrangements. I can help with the first half of the question and I would—

CHAIR—Is this something you want to talk about in an open session, or would you prefer to talk about it in camera?

Mr Rohan—I think it would be better in confidence. If you are happy, I can provide some figures to the committee at a later date.

CHAIR—What about DFAT? Are there any other points you want to make before we reconvene in camera?

Mr Biggs—I think we will take on notice the question about the department's view on the feasibility of an extended subsidiary agreement going to a two-year negotiation.

CHAIR—That is what Mary is doing for DPIE.

Mr Biggs—There is one elaboration that Mr Serdy wanted to make on sea law.

Mr Serdy—I am happy to say that during the lunch break I have become slightly more expert on the question of the law of the sea. In fact, you can approach it from a

number of ways. The simplest one would be to say that the subsidiary agreement is consistent with the head agreement. The head agreement is consistent with the law of the sea as it was when it was negotiated in 1979 when UNCLOS was still at the stage of being a draft text. I could add to that by saying that given that UNCLOS was not yet in force, or even signed then, the law of the sea framework that we had to go by was customary international law, and Australia had traditionally taken a very conservative view of what was allowed to it as a coastal state under customary international law. When we declared the Australian fishing zone in 1979, it is arguable that the state of the law was such that we could have done it some years earlier, but we waited until we were perfectly sure that that was acceptable. So much for the background.

You also asked whether the agreement is consistent with UNCLOS, the UN Convention on the Law of the Sea, as it stands today. That agreement does not talk about fishing zones as such. What it does have is a very long section on exclusive economic zones. It is true to say, for our purposes, that we can treat the fishing zone and the exclusive economic zone as more or less the same thing. The AFZ extends a bit further inwards; it is the area between three and 12 nautical miles from the baselines, and that forms part of the territorial sea so we can do whatever we like there more or less. Australia exercises full sovereignty there. So the only part we need to worry about is what UNCLOS says about the EEZ.

In article 56, the coastal state is given sovereign rights for the purpose of exploring and exploiting, conserving and managing the living and non-living resources of the seabed, the subsoil and superjacent waters. Obviously that includes, above all, fish. Then we come to article 61—

Mr McCLELLAND—I suppose fish and birds.

Mr Serdy—If you are planning to exploit birds commercially then that would cover birds as well.

Mr McCLELLAND—No, in terms of birds being caught as bilateral catch you could say that we want to impose a particular regulation or restriction on what you do because you are going to get albatrosses, for instance. Do you think that power would come within that article?

Mr Serdy—It would, most definitely. There is a long list of things that should be taken into account in a coastal state deciding how it manages its EEZ, and that is one of them. Coming back then to article 61, that creates an obligation on the coastal state to determine the allowable catch of the living resources in its EEZ and then to ensure through proper conservation and management measures that those resources are not endangered by overexploitation.

You then move to article 62, which enjoins the coastal state to determine its

capacity to harvest the living resources of its EEZ. Where it does not have the capacity to take the whole allowable catch, it is intended that through agreements or arrangements other states should be given access to that surplus. There is a provision there that landlocked and geographically disadvantaged states should be given special preference and even more of a preference to the developing countries among them.

You can see that there is a fair amount of leeway for Australia as a coastal state to enter into an agreement of this sort. There is also the question of whether in fact we have to do precisely those calculations that I was just referring to. If we look at state practice since the convention was opened for signature in 1982, we find that very few states have actually gone and done the calculations that were mandated there. Australia is not one of those few.

I was talking before about customary international law, and that has continued to develop even under the convention. It is at least arguable that the exclusive rights of the EEZ have passed into customary international law, whereas the various duties have not. The latest textbook on the subject is *Brown, The International Law of the Sea*, and it makes that point very strongly—that what we are doing is consistent with UNCLOS.

Mr McCLELLAND—If we are not fully exploiting the resource within our region, are we obliged to let others have access to it? Or is it a voluntary thing on our part, as to whether we want to or not?

Mr Serdy—That depends on how deeply you read into the convention. I suppose the short answer is 'Yes'; the slightly longer answer is 'Yes, but'; and the even longer answer is 'Yes' again. I think I have said yes, already.

If we come back to article 62, there is a qualification there. The obligation to allow other states access to the surplus is framed there, in terms of taking into account all relevant factors. Two of those relevant factors are the significance of the living resources of the area to the economy of the coastal state—namely, Australia—and its other national interests. If we decide that it is not in our national interest to let other countries into our zone, then we do not let them. There is no way that we can be forced to.

That conclusion is even more strongly underpinned by the dispute settlement provisions of UNCLOS. There are various gradations of what can happen if a dispute arises. In terms of something like this—when the disagreement, shall we say, is about how much of a notional surplus Australia should allocate to other countries—article 297 says that the worst that can actually happen to us is we would be forced, not into arbitration, but merely into conciliation. The provision goes on to say that in no case shall the conciliation commission substitute its discretion for that of the coastal state in such matters. So, there again, if we do not want to let others into our zone, we cannot be forced to.

CHAIR—Are there any more questions of the witnesses from the three departments or comments from the witnesses before we go in camera?

Ms Harwood—You asked earlier for a gross estimate of the volume of fish taken out of the zone. In the 1990s, the catch by bilateral licensed vessels has been in the order of 6,000 to 7,500 tonnes a year. That is tuna and billfish.

Mr McCLELLAND—What does that include?

Ms Harwood—That is under the subsidiary agreement—so it would be Japanese vessels fishing under the subsidiary agreement. It does not include catch by joint venture vessels.

Mr McCLELLAND—So it was 6,000 to 7,500 tonnes a year?

Ms Harwood—Yes.

Mr TONY SMITH—Was the report provided to the minister by AFMA in relation to the environmental side of this agreement—in other words, in relation to the impact of the implementation of this agreement?

Mr Rohan—I cannot answer that question offhand. If I could take that question with me, I will get back to the committee.

CHAIR—You can take that on notice.

Resolved (on motion by Mr McClelland):

That this committee authorises publication of the evidence given before it this day.

CHAIR—We are going to have to clear the room and go in camera. Those left in the room will have to include only those who are going to speak for the three departments. Ideally, we should have three people, but if you feel that you need to have more than that from the three areas we are happy to do that. But, otherwise, regrettably, for those who are not up the front, we are going to have to ask you to leave the room.

Evidence was then taken in camera—

Committee adjourned at 3.01 p.m.