



COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Long-line tuna fishing

CANBERRA

Monday, 9 September 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

**HABEL, Mr Simon Grant, Director, TRAFFIC Oceania, Level 1, 71 York
Street, Sydney, New South Wales 182**

**KENNEDY, Mr Michael Geoffrey, Director, Humane Society International,
PO Box 439, Avalon, New South Wales 2107 182**

**SANT, Mr Glenn James, Senior Research Officer, TRAFFIC Oceania, GPO
Box 528, Sydney, New South Wales 2001 182**

JOINT STANDING COMMITTEE ON TREATIES

Long-line tuna fishing

CANBERRA

Monday, 9 September 1996

Present

Mr Taylor (Chair)

Senator Denman

Mr Adams

Mr Bartlett

Mr Hardgrave

Mr McClelland

Mr Tony Smith

The committee met at 9.03 a.m.

Mr Taylor took the chair.

HABEL, Mr Simon Grant, Director, TRAFFIC Oceania, Level 1, 71 York Street, Sydney, New South Wales

SANT, Mr Glenn James, Senior Research Officer, TRAFFIC Oceania, GPO Box 528, Sydney, New South Wales 2001

KENNEDY, Mr Michael Geoffrey, Director, Humane Society International, PO Box 439, Avalon, New South Wales 2107

CHAIR—I declare open this public hearing into the subsidiary agreement between the government of Australia and the government of Japan concerning Japanese tuna long-line fishing. This committee took evidence in Canberra a couple of weeks ago, and we were in Hobart last week, when we heard from various individuals and authorities. We will be travelling to Fremantle the week after next and coming back via Port Lincoln. That will complete, we hope, this particular inquiry. This morning we are interested in hearing your views on the effectiveness of the agreement, particularly some of the conservation matters in relation to southern bluefin tuna and also—this has come up in varying degrees both here in Canberra and in Hobart last week—the by-catch concerns, particularly in relation to albatross and other fish species.

I welcome the fact that you are appearing jointly this morning. I should point out that your submissions have been published. Are there any amendments that you would like to make to those submissions?

Mr Habel—No.

Mr Kennedy—No.

CHAIR—Would you like to make a brief opening statement.

Mr Kennedy—First, I will say a bit about the organisation. Humane Society International is a large, global organisation with its head office in Washington, USA. We have offices in Canada, the US, Europe, Central America and Australia. We work primarily on treaty matters concerned with biodiversity, threatened species, fisheries and a range of other conservation matters. We established here in Australia two years ago to promote such issues.

We are glad to be here today to talk about the agreement with Japan. We, in general, support this agreement. We believe that this sort of bilateral arrangement with fishing nations is very important and very necessary and, indeed, is a clear obligation under UNCLOS and other subsidiary arrangements for fishing agreements, the straddling stocks treaty, et cetera. We support this sort of ongoing agreement with Japan and other nations with whom we may do business.

Our concern is primarily for the state of the target stocks that are fished by Japan and Australia, in particular the southern bluefin tuna, which has been reduced to historically low levels—about 10 per cent of original parental stock. We are concerned, as well, for the by-catch issue, which these days is becoming quite serious, particularly for the wandering albatross and a range of other seabirds, about 14 in all, and we have increasing concern for the effect of such fishing activities on shark species.

We think that these arrangements are an ideal way to pursue better conservation arrangements with Japan and other nations. Our goal is to try and improve those arrangements for conservation as the years progress and as this treaty, hopefully, gathers strength.

CHAIR—No other opening remarks?

Mr Sant—I would like to make one briefly, firstly to explain what TRAFFIC is. We are a global network of about 17 officers, at the moment. We primarily work on trade as a conservation organisation. We are a program of the World Wide Fund for Nature, WWF, and also IUCN, the world conservation union. We work on a wide range of trade issues, from fisheries through to the timber trade to the reptile trade, et cetera. Our main mandate is that we do not object to utilisation but we monitor trade to ensure that it is both sustainable and legal.

Our specific office, TRAFFIC Oceania, has had a few years involvement in the fisheries issue within Australia. We have permanent observer status on two of the MACs under AFMA, the southern shark MAC and also the eastern tuna MAC. Also, for the last few years we have had a lot of involvement with negotiations to do with the CCSBT, as a member of the Australian delegation.

You would have seen the submission that we have made. I will just quickly run through the main points of what we feel about the agreement. We think that the agreement actually is very good. Especially we wish to note that it goes further than Australian policy does at this stage, to do with fisheries management. Something that we do have concerns about is that we need to see Australian policy brought up to the same level as we expect on international agreements within our waters.

Most specifically, we fully agree with the mandatory use of bird mitigation devices through the EEZ, something that is also reflected under the Australian Fisheries Act; also, the shark by-catch code of practice, something that we feel should be mandatory across all state and federal management within Australian waters; and also the provisions for real-time data collection. We feel that, where practicable—obviously, not within every fishery within Australia could you expect that kind of compliance, but within certain fisheries—it helps to ensure that assessments of stocks can be done in real time. Also, we just want to flag to make sure that in terms of ensuring compliance with bilateral agreements, et cetera, there are adequate funds for enforcement.

CHAIR—Before I invite my colleagues to pose a few questions I would like to ask HSI: in your submission you talk about listing the southern bluefin tuna as an endangered species. We have had some evidence on that, and the evidence really does not support that approach in general terms. Could you just say specifically why you feel that it should be listed.

Mr Kennedy—Certainly. There are so many stories to tell. I guess the difficult part is that determining a fish status by domestic or terrestrial laws is hard to do, and often because it is hard to do it is rejected. An example is given in the federal government's threatened species legislation. The criteria used to determine 'endangered or vulnerable' are quite clearly based on historical data in relation to mammals and birds, not to fish, and it is very hard to determine with accuracy whether a species is in fact declining, increasing or stable. Half the problem in this whole issue is determining precisely what is happening.

Historically, HSI is simply following up upon the concepts and ideas of other organisations in this regard. For example, in Kyoto, back in 1982, Sweden put forward the southern bluefin tuna and the northern bluefin tuna for listing under CITES, which is the trade convention. That does not mean that the species are banned from trade; it does not affect quotas. It simply requires you as a nation that takes or trades in tuna to be licensed so the worldwide progress in the species across the globe can be marked. Because nations like Korea and Indonesia are not part of this treaty, the aim is that by making them part of CITES we can track what is going on globally.

We assess quotas right now without data from those other fishing nations and it is very difficult to do. That is what we do, in effect. Japan, NZ and we debate quota without knowing exactly what Indonesia, Korea or others are doing. CITES is a way to help cope with that, so both Sweden and, the year before last, Kenya have tried to do the same thing—list the bluefin tuna under CITES to control trade better. The proposals they made were that the species was in fact in steep decline and that it was potentially threatened. Another view is that you cannot send a fish extinct, that it is an impossible thing to do. So there is a need to define a new criterion. It may be commercially extinct—there is a point after which you do not fish any further.

This year, in London, a meeting of the World Wildlife Fund and IUCN specialist groups on threatened species reviewed marine fish globally for the new report coming out this year, the 1996 register of threatened animals. Their view was that the southern bluefin tuna was a greatly endangered species and therefore required action from most nations fishing, as soon as possible.

Our view is that, given the low stock standards of 10 per cent, maybe a bit below, maybe a bit over, and given the current quota size, which even CSIRO will tell you cannot guarantee an increase in the stock at all—there is an uncertainty about the stock's progress—in that situation you should be extremely cautious. Given the potential of

current levels of quota, given that Japan is pushing for increased quotas, we are very concerned and nervous about the effect of that occurring in the next year or two upon the stock's final destination—a decline or otherwise.

So our case has been made, being based on what we think is sound scientific evidence, supported by IUCN or World Wildlife Fund, Kenya, Sweden and others, that the stock really has so dramatically declined that you ought to take strong action to conserve it.

CHAIR—In the light of the extreme caution that you mentioned and the very lengthy process which there inevitably is, in terms of listing as an endangered species, for the purposes of this inquiry can we take it that HSI supports the extension of this agreement, or not?

Mr Kennedy—We do. The fact of life is that right now any nominations for the southern bluefin tuna, either for the federal act or in Victoria or Tasmania, will not succeed. They are not geared to deal with nominations for marine beasts other than whales, or marine mammals, in fact. Fish will be rejected.

I guess that in part we are making the point that if it were an elephant it would get listed, but it is not. It is a fish, so it doesn't. That is in essence the psyche at work. We are making the point that this is a species of importance to the marine ecosystem; it is a marvellous species that ought to be conserved both for its own reasons and to make sure that in the future there is a viable industry. At the same time, we think that listings under CITES, for instance, are good management actions to be taken—that this will in fact help you better manage that stock. But there is still a reluctance by bureaucracies to do so.

I think that DPIE has one foot in each camp. It likes the idea; it would help with its negotiations with Japan to have CITES as a weapon, to say, 'Listen, unless you play the game' and so on. Japanese scientists, of course, have a different view from ours of the target. They think things are much better than they are.

The Japanese have always been afraid of CITES. They know it very well. They understand how it works, but they make out that they do not in negotiations. They assume that CITES means a ban, and it does not. CITES means control of trade through licensing and through monitoring. It does not affect quotas or anything at all—unless, of course, there is evidence that the decline is so great that it gets moved from appendix 2, which is trade with a licence, to appendix 1, which is no trade. That is the big stick that DPIE can use. If you want to use CITES to control trade, you keep better records; but, if you do not play the game, then the danger is that it may indeed move from 2 to 1 and, in fact, be prohibited.

We are just looking at the courses we can take to push Japan, to push DPIE, to take better conservation measures; but we do think that CITES is, in fact, a very real way

to get a better handle on stock assessment and trade stats. It is the same with a range of marine fish—orange roughy, eastern gemfish, the species which declined severely and which need better management. I guess what groups are doing is saying, ‘Historically, fisheries departments have not managed stocks very well at all.’ The recent audit report gives support to that conclusion. Therefore, if those bureaucracies cannot manage fish well enough, maybe there is an argument now to have a joint management with conservation agencies, so that you have ANCA in Canberra managing southern bluefin tuna with AFMA, under joint legislation. We are just saying, ‘If you cannot do it, we will look for other ways of doing it, under different conservation regimes.’ I guess that is the threat. Of course, it is not a threat, in our view; it is simply better management.

Mr HARDGRAVE—Are you satisfied with the transparency of an agreement like this in ensuring the Japanese declare accurately the catch numbers which they are pulling out of the ocean?

Mr Kennedy—Compliance on the high seas or in the EEZ is an enforcement problem. I have worked with treaties for the Japanese for a long time. They are always the bogymen in the treaties—CITES, IWC, you name it. They are the people we are trying to convince to do the right thing. So, yes, there is concern that maybe the stats you get are not perfectly accurate, and we rely upon the resources of the department and CSIRO, as best they can, to sort out the truth of the matter. So far, CSIRO has been doing a good job in holding the fort against Japanese insistence on increasing quotas. They say, ‘Here is the real state of the stock. We think, in fact, it is fine. Let us get on and increase the size.’ In general, yes, there is a nervousness about Japan’s compliance. I guess the only way is to have a comprehensive observer system that works and that has enough coverage to make the stats that come back believable. My response is that, yes, I am troubled, but it is hard to deal with unless you have a good observer system that you can validate fairly accurately.

Mr HARDGRAVE—In Tasmania last week many witnesses were putting the case to extend the exclusion zone from 12 nautical miles out to 50 nautical miles. Would you support such a move?

Mr Kennedy—I think so, yes. Of course, AFMA controls but a small part of the industry. It relates mostly to the EEZ. The fishing effort in the three-mile limit is far greater and managed by the states. So I am very keen to make sure that global fishing fleets do not impinge upon what is really a fairly difficult management situation. So, yes, I prefer to have them in a band where we can see them.

Mr HARDGRAVE—I have a couple of questions about the albatross problems and the by-catch mitigation methods and so forth. There was one suggestion put forward last week—again, by some experienced skippers from the Tasmanian fleet—that they are casting at night, which is their way of ensuring less bird stock is affected. Would this also seem a reasonable suggestion to you?

Mr Sant—I think that would be a reasonable suggestion. I suppose one thing I should quickly clarify is that, when I say that I agree with mandatory use of bird mitigation devices, I mean that in a broad sense, in terms of using other methods such as casting at night, thawing bait, all these other different techniques that can be used to reduce the number of birds that are caught. At the moment, there is a slight problem. The way it is regulated under the Australian Fisheries Act is that all the long-liners must use tori poles, which are a certain sized gear.

CHAIR—But the Japanese are not required to use tori poles, are they?

Mr Sant—Yes, I think they have to use tori poles—not on the high seas; I am just talking about within the EEZ. I would agree: that does seem a feasible way of reducing the catch. It is only with backed-up observer information that you can really clarify that. I would imagine that national parks in Tasmania, with Nigel Brothers' work, would have statistical evidence of whether there is a reduction.

Mr McCLELLAND—Are there any statistics as to the percentage of by-catch, in the sense of not intended or not used catch, such as the albatross and sharks?

Mr Sant—Definitely, and that is held through the observer program, I believe, by the government. There are trip reports. Each year AFMA releases a trip report of the observer program on those boats, and it has a lot of information on birds, but mainly on all of the fish species that are caught. That information is available.

Mr Kennedy—This is a response to a question that we had asked about two months ago about by-catch. It lists the sharks, for instance, and other fin fish, but not the albatross. We have fairly good stats on albatross, which helped the federal government determine whether or not to list the albatross and to list long-line fishing as a threatening process. So we have stats which are indicative enough to warrant conservation action, but we have no idea how well the tori pole will work. We have to wait and see just what will occur in terms of the effect upon the birds. It may be that they are not effective enough and we have to find new ways. That is why we are very keen. In fact, next week we are going to talk to the parks people about the threat abatement plan and how it should work and ought to work for the Japanese and domestic fleets. In essence, we do not yet know whether these devices will work.

Mr McCLELLAND—How long have they been using them for?

Mr Kennedy—I guess, legally, just for a year or so; but I think Brothers et al have had domestic fleets using them for quite some time before that, as a voluntary measure. I believe that, even last year—or was it the year before—when the federal government listed long-line fishing, in that decision by the minister they declared that they did not yet know what was the effect, good or bad, of the tori poles being used, and we will not know for a while yet. This is the problem. We take probably 50 per cent of the

world catch of albatross, which is significant.

CHAIR—There is some evidence, too, in terms of the albatross carcasses, that the Japanese are not complying with the requirement.

Mr Sant—I would not know; I am sorry.

Mr ADAMS—Do any observers go on Japanese boats?

Mr Sant—We do not have observers.

Mr ADAMS—There are observers that go on Japanese boats.

Mr Sant—Yes, definitely.

Mr ADAMS—They bring back statistical evidence. How does that stack up, as far as compliance is concerned in keeping account of the birds, et cetera?

Mr Sant—I do not really know.

Mr Kennedy—The compliance measures are all very new. There is logbook keeping and keeping the bird if you happen to catch it. So it really is too early to tell. Anecdotally, the assumption has always been by our fishermen that the Japanese take what they can, when they can, and you had better watch very carefully. They may, indeed, play games with those by-catch issues. We just do not know.

Mr ADAMS—But having observers on the boats, which is how it is happening, is essential. These people are keeping records. It is pretty uncomfortable for some of them, but it is a lot cheaper to send somebody out on a Japanese boat than to put our own boats out there and do that sort of experimentation to get the numbers. I just want to come back to the CITES situation. Is that an accreditation situation? Does the body then accredit the product in bluefin tuna?

Mr Kennedy—That is a separate system. Under CITES, if you propose to list a species under appendix 2, it may be threatened by trade unless you make it properly. That simply requires those states that are members of CITES to issue an export licence, in the first instance. The importing nation does not have to issue an import licence but we do, as a nation. We take it one step further than the CITES. We are quite tough; we are quite progressive. But in general it just means that you have to issue an export licence and as an importer you must be satisfied that what they exported was what you imported. You report on your imports and exports to the secretariat once every two years.

Mr HARDGRAVE—So the information that would come from the Indonesians or the South Koreans who were fishing this fish stock, when they were exporting to a

country that was a part of CITES, would then be recorded and the information would become transparent?

Mr Kennedy—That is right. So we would get a bit more about what they were doing, how much volume we are talking about and where it went, identifying the precise species. It is just one extra way we might have to better debate with the Japanese at the CCSBT meetings.

CHAIR—Are Taiwan, Indonesia and South Korea members of CITES?

Mr Kennedy—Indonesia is, Taiwan is, Uruguay is—

Mr ADAMS—But the importing country might be, and therefore the information will come on deck.

Mr Kennedy—Sure.

Mr ADAMS—Have you looked at all at the accreditation system as a way of having some influence from a consumer perspective?

Mr Kennedy—Do you mean labelling?

Mr ADAMS—Yes.

Mr Kennedy—I have not dealt with the issue. That is really a campaign that the World Wildlife Fund promotes, but it certainly has enormous potential. It is a bit like the timber labelling process, it is controversial and hard to implement. But I think in effect in the long term we have to achieve that sort of arrangement, otherwise we will be in trouble. But yes, it is being developed now. Who is the company they are working with?

Mr Sant—Unilever.

Mr Kennedy—It has agreed to try and do this in Europe, through Sainsburys and such stores, which have agreed to do this in London, for instance. It may be a great way to get a handle on what is going on and to convince consumers to be careful about what they do.

Mr ADAMS—And it starts to put pressure back on those that will not comply. I just want to touch on the new bait casters and your feeling about those, the ones that throw the baits, the lines well out from the wash from behind the boat. Is it still too early to say what you think?

Mr Sant—I personally do not know. I think it would have to be again looking at the observer program and the information of Nigel Brothers and their group on whether

they are finding them effective. I am sorry, I do not know.

Mr ADAMS—That's okay. Thanks very much.

Mr BARTLETT—You are suggesting that management and sustainability are enhanced by this treaty, and CSIRO seems to be suggesting the same sort of thing. How effective is that, though, given that countries such as Taiwan, Indonesia and Korea are not party to such a treaty? Is it really very effective at all?

Mr Kennedy—Indonesia is a party, Taiwan is a party.

Mr BARTLETT—Sorry, no, the bilateral treaty—in terms of quotas and catches.

Mr Kennedy—Under the straddling stocks treaty, nations are required to develop regional agreements. Yes, of course, the arrangements are weaker for not including those other fishing nations, and we have been encouraging our government to go get them for a number of years now. They have been playing hard to get. But I agree, CITES is one way to get statistics on those other, if you like, renegade nations, but it is best if they join the regional agreement. I cannot deny that we are all much weaker until that occurs, and I guess it is because it has taken so long to convince nations to do so that CITES appears to be a quicker method of getting a handle on what is going on by the time you go through a negotiation process to get them all to join up.

Mr BARTLETT—Would you have any figures on what you would see as a desirable quota size for SBT?

Mr Kennedy—In our submission to the minister and DPIE we felt the quota as it stood was very uncertain. I think CSIRO produced a table which was very, very useful, which had all the potential quota sizes and the year numbers, and what was the likelihood of the species recovering or declining in a certain year, given the size of the quota. On the current size there was no guarantee at all that by the year 2020, the goal of CCSBT, the stock might increase. It was marginal, uncertain, to say the least. Our view, therefore, was that to be precautionary the quota ought to be reduced by about a quarter. I cannot remember the exact figures but that is to be really safe about what you are doing, especially as the Japanese are pushing so hard, as they always do, for an increase in quota—usually under an experimental banner.

Mr BARTLETT—If the quota were in fact reduced, according to what you say, what would be the likelihood that Japan would then decide to go outside of that arrangement and just fish on the high seas?

Mr Kennedy—Japan always creates trouble at a range of treaties—CITES, IWC, the Bonn convention, you name it. They have good negotiators. They play hard ball. But I do not think I can recall an instance anywhere in the past where they have withdrawn

from a treaty because of strong conservation efforts. So I think historically they are not likely to do so.

Mr BARTLETT—Even if we put pressure on to reduce the quota?

Mr Kennedy—Sure. It is still a very, very valuable fishery. If it is going to continue in the next century or so, we have to make sure we take action now. It is such a long time before you see a result from your actions that you have to be precautionary. If we are wrong this year, or next year, then that has implications for the next 56 years and for our own industry. So precautionary is the name of the game, and I think there is enough lack of evidence to suggest you take that course of action.

CHAIR—So in terms of the Japanese attitude to experimental quota increases, is that not a very strong argument at all?

Mr Kennedy—I do not think so. They pursue that sort of enterprise at other treaties. IWC is the classic example. Scientific whaling, for instance, which is much opposed by our government, I do not think should be supported within the CCSBT either. The pressure will be enormous, of course, to do so but we have to maintain that opposition. I think New Zealand will too, and I guess the question then arises of whether, if you do join Korea, Taiwan and Indonesia up, you are cutting your own legs off and just joining Japan's friends to actually see an increase in the quota incurred. That may be the case: join them up and see the treaty endorse higher quotas, which is not what we want to do. Nonetheless it is a danger.

Mr TONY SMITH—This is more in relation to TRAFFIC Oceania. What is it? Who set it up? Where do you get your funding?

Mr Sant—TRAFFIC is a joint program of WWF, the Worldwide Fund for Nature, and also IUCN, the world conservation union. I think TRAFFIC has been in existence about 20 years.

Mr Habel—About 15.

Mr Sant—The office in Australia was set up in 1983. We have a broad range of funders, both government and also other, non-government areas. We specifically work on trade issues to do with conservation, ensuring that utilisation is both sustainable and legal.

Mr Kennedy—TRAFFIC's beauty, I think, to explain it briefly, is that it is seen as an impartial non-government organisation that collects statistics which, when finished, can be given to anybody. So, CITES uses them and the US government uses them as an independent consultant on trade by all sorts of people. By maintaining that independence and impartiality, they have been very useful in helping our own country to decide what to do at CITES on a given issue. So, we rely upon their stats as well as those of the

Australian government.

Mr TONY SMITH—Similarly with the Humane Society, it appears to be fairly new organisation in Australia. Is that right?

Mr Kennedy—Yes.

Mr TONY SMITH—You have nothing to do with the commercial side of fishing at all; the society is separate from anything to do with the commercial side of fishing? Is that so?

Mr Kennedy—Yes.

Mr TONY SMITH—Mr Kennedy, I am just having a look at the figures for the numbers of birds caught. In 1994 it appears that 8,700 were caught. That seems an outrageously high figure, and one wonders whether there will be any birds left after a few more years of fishing like this, unless something can be done. The emphasis of both submissions seems to be on mitigation rather than on elimination. I would have thought, if one bird is caught as part of this process, that is one too many, particularly where the wandering albatross is now an endangered species.

Mr Kennedy—We made application in 1994 to list both the albatross and long-line fishing. Although we do not say ‘elimination’, of course that is what we desire to see. The end product is elimination. At least for the wanderer, the catches right now are unsustainable.

Mr TONY SMITH—Yet, by this agreement, we are going to eat further into that population.

Mr Kennedy—I think the point of elimination for the albatross and long-line fishing—and, in fact, we have made applications now for a range of other species for the federal act—is that, if the Japanese and our own domestics and everyone else catch albatross and do not abide by the threat abatement plan, they are acting illegally. Our proposition will be—maybe in the next year or so—that, if catches of albatross are not declining, if the plan is not being implemented adequately, then we want to see action by the government to ensure that those things are occurring. That will mean a request—in fact, even a challenge in the courts—to say, ‘This is not working. The birds are still being caught. The reduction is still insignificant. Therefore, we need to take some drastic action.’ We would put that case.

Mr TONY SMITH—Once it is a threatened species, though, is it not a drastic situation?

Mr Kennedy—Endangered is serious. It means that within the next 25 years it

may be down the tubes. But, in fact, for the albatross—the wanderer—it could be far less. There may be five birds left that do not breed. They could live for 50 years but, in effect, the species is gone.

Mr TONY SMITH—As far as the high seas and the by-catch are concerned, there is no requirement, as I understand it, for the mitigation devices to be used. Is that right?

Mr Kennedy—That is right.

Mr TONY SMITH—So, this agreement does not give any jurisdiction or any warrant for the Australian government to say, ‘Now that you have signed this agreement, would you please comply outside of our waters?’

Mr Kennedy—Nothing legally, but we are saying that this is a good chance to talk to Japan. Given that the catch of albatross, the wanderer, globally is enormous—44,000, I think, is the figure often given by Brothers and crew for the global catch, but it is probably far higher than that—

CHAIR—From long-line fishing?

Mr Kennedy—Just long-line fishing.

Mr TONY SMITH—What is the figure of 44,000 related to?

Mr Kennedy—Forty-four thousand albatross being killed per year by long-line fishing is a standard quote. It may be accurate and it may not, but it is certainly tens and tens of thousands of albatrosses. So while we may deal with it here, or be trying to do it here, it is in fact a global problem. If it is not tackled elsewhere it does not much matter what we do here, in some respects.

Mr HARDGRAVE—Are you saying we have leverage to obtain an increase?

Mr Kennedy—We have a reputation globally as a good conservation state—a good reputation.

Mr TONY SMITH—Where is the determination to eliminate by-catch by developing a line of research so that when these lines are set there can be no by-catch? Where is the determination to do that? Can you see it anywhere?

Mr Kennedy—Our hope is that we will be involved with the government in developing the threat abatement plan. So we will be very tough in pushing for measures that will in fact see, or will attempt to see, the elimination of by-catch in long-line fishing. If our fear is that, through that process or through implementation, that cannot be

achieved, then we will seek tougher action.

Mr TONY SMITH—What would you like to see done? Have you got anything in particular in mind? Is it just research, or are you aware of specific measures that could be used?

Mr Kennedy—Apart from the usual put forward by Brothers et cetera—thawed baits, night fishing, tori poles and whatever else—I have no bright ideas. I hope to sit down next week with the government and talk to industry about what those measures might be. As I say, it may be that in that plan development we will find new means, but otherwise I guess that, if it gets too much, we want to see long-line fishing halted until we can actually find a way to stop the kill occurring.

Mr McCLELLAND—Would a penalty per albatross be viable—if that penalty were, for instance, put towards research of mitigation devices?

Mr Kennedy—It would have to be a lot of money, I think. The only way that I as an NGO could affect that situation, if it was getting worse, would actually to be able to prosecute either a domestic boat or a Japanese boat for taking albatross, which right now is illegal. In the words of the act, they are taking albatross both ‘knowingly’ and ‘recklessly’ on many boats right now. That is breaking the law. I could now go to court if I could find a captain that I could prosecute and take out an injunction, put the case in the Federal Court and have fishing stopped. But that is such a hard thing to do, and the evidence from a boat would be almost impossible unless the observer on board was so upset and appalled by what was going on that they came forward as a witness in the High Court, or the Federal Court.

Mr McCLELLAND—Or unless they did not have up a tori pole, or something of that nature, which would be—

Mr Kennedy—But making that stick is the hard thing. Enforcement is the big issue. How do we know what is going on? Can we trust the stats? If you cannot do either, then we are left with no reasonable other course than to find some legal means of causing this operation to cease.

Mr TONY SMITH—You said in your report that the access fee was low. Did you have it in mind that that access fee could be augmented somewhat, to take account of the research that is necessary to eliminate this problem?

Mr Kennedy—As an example, last year Senator Faulkner issued a press release saying that they would now fund, with extra cash, I think about \$1.3 million towards the recovery plan and the abatement plan for long-line fishing. That was just for that plan—\$1.3 million, minimum. The cost of doing that annual rotation is enormous, and I think that, given that we are doing the work in Australia, the fee of three and a half million

bucks is pathetic, basically. It really ought to be increased, and the Japanese can afford to pay for it.

Mr HARDGRAVE—In your submission, at page 3 I think it was, you talked about the New South Wales government in May this year commencing a year-long ban of the taking of southern bluefin tuna in New South Wales waters. Why did New South Wales do this? Why were they the only state to take this on?

Mr Kennedy—For some reason the minister had been moved by the proposition that we should list the southern bluefin tuna as an endangered species. He appears to be particularly hard upon the commercial fisheries rather than recreational in what he is doing.

Mr HARDGRAVE—To what sort of extent does the southern bluefin tuna stock come into New South Wales waters anyway?

Mr Kennedy—I do not know the exact size. It is certainly taken by long-line fishing. I think the long-lines are very short—six or seven hooks. They do take SBT within our three-mile limit, both commercially and recreationally. In any event, in New South Wales that season is only six months long. It is closed anyway for six months. He extended it to a year because of the current debate over the size of stocks, which we said was a very good move.

Mr HARDGRAVE—What was the limit?

Mr Kennedy—Normally, if the SBT is not fished for six months within the New South Wales three-mile limit—

Mr HARDGRAVE—The three-mile limit?

Mr Kennedy—He extended it to a year within the limit.

Mr HARDGRAVE—Really, the ban is going to have very little effect.

Mr Kennedy—It is probably not a big deal, but as a move—

Mr HARDGRAVE—As a token gesture.

Mr Kennedy—It is still to be congratulated. It is recognition that the species may be in trouble. Therefore, at least we will take a small step. We think that is fine.

Mr HARDGRAVE—With such a small area, the question of enforcement—

Mr Sant—If I can add one issue: I think it is very important that there is that ban

within New South Wales waters, because there is a compliance problem. Otherwise you will have state boats within New South Wales that are state registered, not Commonwealth registered, in terms of the landing of southern bluefin tuna. It is very hard to draw a line in the ocean and say, 'That is the three-mile limit. I caught it on the inside of that line.' So, if you have got boats landing them within New South Wales saying, 'We caught them in state waters. We do not need quota; we do not need anything,' it is quite important for compliance that—

Mr HARDGRAVE—Do you think there will be a valuable lesson or a valuable example to perhaps bring to the federal government from a pressure point of view out of this exercise in, say, June next year, after the 12 months ban is over?

Mr Sant—Yes. It is an agreement, obviously, in the offshore constitutional settlements that needs to be made with AFMA and the state governments. I think it is important in terms of compliance, in terms of status of the stocks. For those reasons, I think that will depend on what actually happens with this year's assessments. Like HSI, we believe that the last quotas that were agreed should have been reduced by 25 per cent. It would depend on the recent assessments that have been done whether or not we feel that, for endangered status reasons, there should be a further reduction.

Mr HARDGRAVE—With the three-mile limit along the New South Wales coast, you do not know how much fishing takes place there in the first instance. I guess the whole thing is really just a drop in the bucket.

Mr Kennedy—It is pressure upon the federal government to look at the broader picture. The effect, of course, of listing SBT in the act federally is a ban on fishing. As I say, the problem is that the criteria are based on mammals. Next year the act is being reviewed by a requirement under law, and we will be pushing for the act to contain a new set of criteria for marine fish. In the first place—let us talk about CITES—I think, inevitably, there will be a listing for SBT in CITES. That is going to happen. Maybe not next year in Zimbabwe but maybe the year after, wherever it is going to be, that is going to happen for a lot of fish. That will have implications which are good for us. But I think, too, that increasingly marine fish are being seen as threatened species, as are the elephant and the rhino. When the act is changed, with better science by ourselves, the day that it occurs here or elsewhere that a commercial fish gets put on an endangered species act there will be a change in fisheries globally.

There is an example right now in the US. There is a proposal for a threatened salmon in north-west USA, which is commercially very valuable, for listing under the endangered species act. When that occurs it will be a watershed—no pun intended. I think you will find that, once you get a commercial fish on an act for endangered species, there will be a change in attitude of management that will be quite dramatic. We are attempting to do that. We are attempting to break the mould to get fish seen as more than just a resource, because they are more than just a resource.

Mr HARDGRAVE—So you have put a spotlight on something to come.

Mr Kennedy—And it will come.

CHAIR—In the HSI submission you talk about environmental impact studies. We have had some evidence on that to show that, whilst theoretically they might be very desirable, in practice they are very difficult, and particularly the time scale will be such that it would make them totally impractical. Would you like to comment on that. I think AFMA has made that point. I think it was made again in Hobart last week—by CSIRO, in fact.

Mr Kennedy—That may well be. As you would know, the audit office report said, ‘We would like you to do impact statements, please, both on your par stocks and your future stocks. It should be a matter of normality that you do an impact statement for each fishery that you develop or are not using now.’ I think that the problem is that, to take two examples of late, eastern gemfish has a zero quota in New South Wales. It is stuffed; it is really in deep trouble. In fact, we made applications under the federal act for listing of the gemfish a year ago. That was rejected. About two months ago, AFMA wanted to go and do an experimental fish in New South Wales, to take 300 tonnes of gemfish—which is in effect in excess of the quota back in 1992, a lot of fish.

Mr ADAMS—This is over and above the quota?

Mr Kennedy—There is no quota now. There are by-catch limits but there is no quota. They wanted 300 tonnes to fish experimentally, to try to get a handle on the correct line of population size. We wrote saying, ‘Listen, chaps. You have just had a report by your office saying that you should do an impact statement,’ but they had refused to do it. Their response was, ‘But we checked with CSIRO and they said it is okay.’ In our view that is not good enough. It is not public, for a start, and it is not good enough.

It is a reliance upon CSIRO. CSIRO has a very neat arrangement with AFMA. They get paid a lot of money for doing a lot of work. It is cynical, but the fact is that they are a customer, a major customer. I think that sort of arrangement is simply too incestuous, not public enough and too dangerous.

It is similar with Macquarie Island. They are going down again in November with a WA company, on the *Australis Leader*, to do—again—experimental fishing. There is no EIS, again because CSIRO said that it is okay. It is out of order. It is too dangerous. While there may be trouble in terms of the time lapses in doing impact statements, we must find a way to do that. Otherwise, how can the public have faith in the process for managing resources? You have got to find a way.

CHAIR—One argument put forward is that the high seas data, particularly, takes anything up to 18 months to really feed through. The fishing zone is good, but it is the

high seas and it is the interrelation and the correlation that makes it very difficult.

Mr Kennedy—I do not deny that. I have not got an instant response. Glenn might.

Mr Sant—I agree that it is difficult to get that high seas information. Through, for instance, the SBT process there is a huge problem with getting the data from Japan through into the assessment process and also getting it at the degree of clarity that they need to make proper assessments and reduce any uncertainty around that.

I agree with Michael in terms of EISs. I do not think it is acceptable, in terms of using a fisheries resource, if someone says, 'Let's go fish a certain stock,' and you go, 'An EIS is too hard to do. Go ahead.' You are putting those stocks at great risk without assessing whether you can wear 10 vessels going down every year taking 100 tonnes. You do not know unless you look at that. To throw your hands in the air and say that it is too hard, whether it be because of high seas problems or not, shows that perhaps that is where there needs to be a proper review of what EIS requirements can be done and are appropriate under fisheries. That really needs to be addressed.

Mr ADAMS—But let's face reality. Historically that is what we have done. That is how we have fished every stock that is out there.

Mr Sant—That is right, and that is why we are in huge problems now.

Mr ADAMS—Despite unsustainability or whatever, that is what we have done. I guess the evidence we have received is that the cost to do those things is just damn enormous. It is great to take that view, but how hard is it to achieve it in financial terms? That is the difficulty.

Mr Kennedy—The result may be the loss of an industry, or several. You may pay for it down the line by 2,000 jobs or a lost species. It seems to me that we must find a way—

Mr ADAMS—I am not opposed to finding the way.

Mr Kennedy—It can be done. We are being told now, 'The management plan for northern prawn and SBT is our double for an EIS, and we hope you like it.' I guess I do not like it. It really is not an EIS per se. It does not address, and has not in the past addressed, conservation matters particularly well. In fact, it has often ignored them. By-catch, northern prawn—what is by-catch? Turtles—what are turtles? It is not really addressed in the way it ought to be.

Mr ADAMS—I will take it on board. I wish you well in working towards those goals. We need to do it.

Mr Kennedy—Again, the by-catch issue may be the one which will come back and bite the industry. That may be the way in which we actually find a way to achieve these sorts of impact assessment means. Because by-catch is often covered by endangered species laws, it then becomes a legal requirement, which we are watching very closely. If we think that this treaty is not doing enough to conserve by-catch of fish and albatross, we will look at ways in which we can legally address it.

Mr ADAMS—It is not only albatross. The black marlin, the rays, the sharks, where the fins come off and the carcass goes over the side—

Mr Kennedy—At CITES next year in Zimbabwe there may be a dozen nominations for families of sharks in trade. I am trying to think of the implications. CITES also requires permits for sharks taken in your own waters and imported in your own waters if it is on CITES. It gets a bit complicated but, in effect, the huge by-catch of sharks by Japan and by our own fleets may be a no-no sometime after June next year.

Mr ADAMS—I am very interested in this. Have you done any work on the cultural aspects of that? There are cultural reasons why fins are taken from sharks.

Mr Kennedy—We have been flogging shark fin to the Chinese since Captain Cook arrived. We have a long history of doing so. But now shark fin is so valuable that every fleet in every sea is taking shark fins—usually illegally—and off they go with no controls whatsoever. We have not got a clue about how many sharks or who does it. It is very dangerous. At the very least, we support these sorts of guidelines—but God knows what the Japanese actually do—except for the last line, which says that we should promote and find new shark markets. That is very dangerous. These are major predators, and you do not find markets for major predators. It is just too dangerous.

Mr ADAMS—You mentioned China. I did not quite pick up the China aspect.

Mr Kennedy—China was the historical centre for shark fin demand.

Mr ADAMS—There is a great saying about China: China, as a nation, is 3,000 years of unsustainable development. It probably goes for their seas as well.

Mr Kennedy—I think the ships would come from Sydney to Tasmania, where they took grey nurse shark fins, and off they went to China. With sharks, by-catch is certainly an issue today. We have put up the great white shark for the endangered species list—and the grey nurse shark and others. We have asked CITES to list them. Talking to AFMA about shark exports, we know how much meat goes out, but not by species. We know the cartilage, oil, skin and fins going out. There are no controls. We have no idea what is going out. We have asked the government to list on CITES school, gummy, whiskery and other sharks in that family so that you can control that trade. You actually list which species, where they are going and what is the product. Unless you do that, we

are going to see declines in sharks, even more so than is occurring now. The sharks are in as much trouble as SBT is. It is a major conservation issue. With the Japanese long-line fishers, I suspect you would find all sorts of stuff in those frozen lockers if you went and had a look.

Mr TONY SMITH—This question is to all three of you. Given that under the subsidiary agreement (a) more southern bluefin tuna are going to be caught, (b) more by-catch is going to be caught and (c) more species are going to be put under threat, leaving aside any purported commercial benefits, what is the benefit of having the subsidiary agreement over not having one?

Mr Sant—Just quickly on one of the issues to do with whether Japan is fishing within the Australian EEZ or not, to do with bird mitigation devices and to do with southern bluefin tuna, we have moved right away from any of the east coast Japanese fleet that is working on bigeye or yellowfin, but under the CCSBT agreement there is a global quota. This is a highly migratory species that, again, does not see a line in the ocean where it is going to cross into Australian waters. The Japanese fleet moves with that stock. So they are going to catch their allotted amount under the CCSBT, whether it is in Australian waters or not.

The issue really is not that it threatens more of SBT because of an agreement with Japan within the Australian waters. Personally, I find that the actual benefit that you have by bringing Japan into an agreement like this—it is exactly the same, say, within the CCSBT context—is that you can then get other parties that are fishing the same stock as Australia to bring on board some of these things like bird mitigation devices. However many thousand or hundred tonnes Japan catches under this agreement, it is on that many tonnes that they have to use bird mitigation devices. They are going to catch the amount anyway. It actually brings in and helps with that.

Mr TONY SMITH—Are they going to catch the amount anyway if there is no agreement on the Australian coast?

Mr Sant—Yes.

Mr TONY SMITH—Why is that?

Mr Sant—Because it is traditional anyway, out in the Indian Ocean. I suppose the main thing you have got to realise is that SBT is based around the southern pole. So it moves around, and it especially occurs within Australian waters. It used to occur in very much higher numbers, too, in New Zealand. Now it is much easier to catch SBT within Australian waters. The Australian industry is very lucky. They do not have to go on to the high seas to catch SBT; it is at their back door. But Japan can catch it on the high seas.

Mr TONY SMITH—And will continue to, presumably.

Mr Sant—Yes.

Mr TONY SMITH—But they are not going to catch less by having the agreement. This is the proposition that seems to be around. They are not going to catch fewer fish by having the agreement. It is commercially insane to sign an agreement where you are going to catch less fish.

Mr Sant—Yes, that is true. It is not a reduction in catch. I suppose I do not know all the legalities, but I would imagine the CCSBT really is more of an overriding factor on Australian decisions whether they allow Japan to catch within the Australian waters. For instance, in the negotiations leading up to the agreement within the CCSBT last year there was no bilateral access meeting to discuss that until there was an agreement on the total allowable catch. So the process is really having that set in the CCSBT and then going to the bilateral agreement.

CHAIR—To answer Tony's question, basically what you are saying—correct me if I am wrong—is that you would prefer to have the agreement than not to have it.

Mr Sant—Yes.

CHAIR—It is better to have it, is it not?

Mr Kennedy—As long as they have a desire to come and fish in our EEZ, we want an agreement. I would not be unhappy if, tomorrow, they thought it was all too tough and took their boats and went home. It would be better for the SBT and for the albatross. That may be a result. For example, if we do not get up the SBT—it is, in my view, a threatened species—under legislation for endangered species, the option is to promote the concept in CITES. I believe now you could develop a paper with another country to put SBT on CITES as an appendix 1 species—no trade. That is possible. The result might be that Japan will reserve its position, but it could not flog its fish to anybody. Your position is a difficult one. How to deal with politics at this level and with Japan to boot is very difficult. The best we can do is to keep pushing for better conservation measures here, and we will make the case continually that SBT is, in fact, a threatened species and should be recognised as such.

But, I guess, to be more positive, our concept is getting Japan to deal with us, to talk to us about promoting by-catch measures globally. So going to the biodiversity convention, IUCN, the Bonn convention, CITES, FAO food security, UNCLOS, as joint partners in promoting by-catch methods to the world would be a tremendous conservation route. Japan has such weight in these matters. At least we ought to, in this context, in this treaty, talk about what we could do jointly to promote by-catch mitigation and the removal of by-catch of sharks and albatross.

There is a meeting in September or November of FAO food security.

Japan is the major protagonist in making sure that access to seafoods is unlimited, also to coastal whaling. We could have a role there to help Japan think more about what it is doing with, say, whaling and SBT stocks and by-catch. To have two nations has worked before. We have often joined with America about conservation matters globally. It works well as a team and we do make progress. In CITES, for instance, we have done a lot of work with the Yanks which has been very, very good. We ought to talk to Japan about joint efforts to promote by-catch in a range of international fora. It can be done, and we ought to try it. If they want to come here, then we want an agreement. I would rather they went home with their boats, and they may do so.

CHAIR—Others may disagree. Just to conclude, I thank you for coming along this morning and for giving evidence.

Apart from the quota and the conservation elements—we have discussed a lot of that this morning—two other things have come up. One is the domestic economic impact of the \$50 million to \$70 million per annum, which I suppose is arguable. The other one, to which my very last question to you is related, is the periodicity of this agreement. We have had some discussion as to whether one year is appropriate, whether it might be two years, whether it might be three years. Does either of your organisations have a view as to whether it should remain at one, or should it be extended?

Mr Kennedy—I guess my response is that, because of the state of the stock, we need to be able to revise the assessment and the quota very regularly, to take account of changes in science and what we find about stock progression or otherwise. For now I would feel happy with a regular annual approval.

Mr Sant—We cannot comment on the first part, which is the economic point. That is outside our mandate. But on the second point, it should stay at a yearly agreement, especially being tied in to the CCSBT process. It is working very well at the moment. I do not think Australia should consider bilateral access agreements when there is not agreement within the CCSBT process, and so I think it should stay on a yearly basis. If CCSBT moved to meeting every second year, it should then be reviewed as to whether it should be different.

Resolved (on motion by Mr McClelland):

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

Committee adjourned at 10.06 a.m.