COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Long-line tuna fishing

CANBERRA

Thursday, 10 October 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, 10 October 1996

Present

Mr Taylor (Chair)

Senator Ellison	Mr Adams
	Mr Bartlett
	Mr Laurie Ferguson
	Mr Hardgrave
	Mr McClelland
	Mr Tony Smith
	Mr Truss
	Mr Tuckey

The committee met at 7.37 p.m.

Mr Taylor took the chair

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

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

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

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

HOLMES, Ms Leanne, Manager, Fisheries Economics Section, Australian Bureau of Agricultural and Resource Economics, Department of Primary Industries and Energy, Edmund Barton Building, Barton, Australian Capital Territory

EXEL, Mr Martin Lewis, General Manager, Fisheries, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

GLEESON, Mr Leonard Matthew, Senior Operations Officer, Compliance Section, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

MEERE, Mr Frank McFarlane, Acting Managing Director, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

ROHAN, Mr Geoffrey Vincent, General Manager, Operations, Australian Fisheries Management Authority, 28 National Circuit, Forrest, Australian Capital Territory

CAMPBELL, Mr William McFadyen, Acting Principal International Law Counsel, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Canberra, Australian Capital Territory

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

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

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

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

McNEE, Mr Andrew, Director, Wildlife and Marine Management, Australia Nature Conservation Agency, 153 Emu Bank Road, Belconnen, Australian Capital Territory

CHAIR—I declare open this public hearing of the committee. I thank all the witnesses for attending, albeit at, I suspect, a rather inconvenient time. We have got a lot to get through. We will try to get through it as quickly as we can. We hope that this is going to be our last public hearing into this inquiry, which, I have to say, for our part—and I think I speak for all members of the committee—we have found very interesting. A number of issues we have found rather daunting and some of those we want to explore once again with witnesses tonight. At our scheduled meeting on Tuesday morning we will hold a further small hearing into the albatross by-catch. It is just a small issue that we want to pick up. Other than that, we hope to finish most of it off this evening.

For those of you who do not know, we have been to Hobart, the west, Adelaide and Port Lincoln. We have heard lots of opinions and taken lots of evidence, some of which I have to say—and this would be of no surprise to you—is somewhat conflicting. Nevertheless, that is what this committee is all about. To complicate the scene a little, what we are also going to look at tonight is the broader national interest analysis for the Indian Ocean Tuna Commission. We will try to pull the whole lot together.

There has been tremendous interest in this specific inquiry. It is, in the scheme of things, a relatively small bilateral agreement, but it has excited something like 50 submissions. That says that this is an important bilateral agreement. In terms of the treaty making process, it reinforces the view that people at all levels, whether individuals or members of peak bodies, want to be involved in the treaty making process. It certainly has shown us that there is a lot of support out there for becoming involved in the treaty making process. We will, hopefully, be reflecting a lot of that in the report which we intend to table in the House by 4 November. That will depend on the drafting process.

We have taken a lot of evidence from a number of groups outside the industry—broader conservation groups and people with an interest in jobs and income in the various areas. We think that we have explored the various areas that we need to explore. Tonight when you are giving evidence if you feel we may have missed something or you have a suggestion, we would certainly welcome your comment before we get into the final bout of preparing the report.

We thought we would have all the witnesses together. I understand that the secretariat has already given you a general idea about the main issues that we might have questions on. There are 11 broad areas that we want to explore: first, the general heading of the agreement; second, data collection; third, port access; fourth, exclusion zones; fifth, the commission; sixth, the by-catch; seventh, the monitoring and enforcement process; eighth, technical developments; ninth, joint ventures; tenth, transhipping; and, finally, but by no means less important, recreational fishing. Then we will get on to the broader issue of the Indian Ocean Tuna Commission. I think that might be the way to deal with the issues.

Before we get into the questioning, if we do as we did last time, I will ask for a brief opening statement. Perhaps if DPIE would like to lead on this one and then AFMA. Bill, did you want to make some opening comments?

Mr Campbell—I will be very short.

CHAIR—We will go to AG's and DFAT, and then we will come into the conservation and environment area. But if you could just keep the opening comments as brief as you possibly can. Mary, we thank you very much for the supplementary note from DPIE. I will ask somebody to move formally to authorise the publication of the supplementary note from DPIE.

Resolved (on motion by Mr Adams):

That this committee authorises the publication of the supplementary submission from the Department of Primary Industries and Energy.

Ms Harwood—Thank you, Mr Chair, I will be very brief. We have prepared a supplementary submission that not only covers some of the issues that arose on notice at the last hearing but also covers some issues from the subsequent hearings that have taken place. I might just run very briefly through those issues.

Firstly, we cover information to make clear the distinction and the linkages between the bilateral agreement and the broader bluefin tuna regime. That is an area where there seemed to have been some confusion in some of the submissions. We wanted to clarify not only the distinctions between them but also the way in which they are connected.

Secondly, in a similar vein, we cover the reasons behind the linkages between port and fishing access, which are currently done as a package in the subsidiary agreement, and the advantages and disadvantages of separating them. Thirdly, some thoughts on the considerations in relation to a multi-year agreement, so if we were looking to do this on a longer term basis, what issues we need to consider.

We have also provided a clearer description of the consultative process in

preparing the Australian position prior to the negotiations. Again, we felt the need for there to be a clear picture of what actually takes place and how views are acquired from the different sectors—commercial fisherman, recreational groups, conservation groups and the state governments. There is also a brief coverage on sea bird by-catch and the Bonn Convention. Another matter, which I know is likely to come up here today, is the relationship between Japanese style long-line fishing and the physical characteristics of the Australian fresh fish tuna long-line fishery. I think the issues that you have listed are very much the same ones that we have identified.

CHAIR—None of us have read your supplementary comments, but we will cover all of those areas in questioning. So I think you can leave it to us to pick most of those up. Does AFMA have any opening statement?

Mr Meere—We do not have any specific opening remarks, other to say that we are here and prepared to answer as many of the questions you want to raise as we can.

CHAIR—I will turn to AG's.

Mr Campbell—We put in quite a short submission at the start of the inquiry, but this is the first time we have actually appeared. That submission largely placed the bilateral agreement in the context of the Law of the Sea Convention. In our view, the bilateral agreement is entirely consistent with the law of the sea generally. The second point is that I think we stated in that submission that there was legislation in place to give effect to the bilateral agreement—that largely being the Fisheries Management Act.

The third and more recent thing I wanted to mention was that we were asked last week by the committee secretariat for advice on the question of multi-year agreements, and whether amendments would be necessary either to the bilateral head agreement with Japan—or any other international agreement—or to legislation on that. We provided advice on that matter to the committee only this afternoon.

CHAIR—We have not seen it. It is being sent over.

Mr Campbell—It has been sent. What I wanted to say is that, from a legal point of view, none of those agreements requires an amendment, nor does the legislation itself require an amendment to have a multi-year agreement. But, of course, there are all the other practical considerations, which I think were mentioned at the last hearing, which would need to be taken into account.

CHAIR—Yes, thank you.

Mr Biggs—Mr Chairman, the only comment that I wish to put on record is that, on Wednesday last week I attended the standing committee on treaties—part of the COAG process. I can record that the premiers departments of the various states were extremely

interested in this inquiry—as the first of the committee's public inquiries. They noted that this was an interesting example where what had been thought to be an uncontentious treaty turned into something with a lot of interest for state and territory governments. They are following the proceedings with great interest.

CHAIR—Thank you.

Mr Morvell—I have no additional comments from DEST.

CHAIR—I will start with a few questions in the agreement area. Bob, if you could do some in the data collection area; and then, Wilson, if you could question on port access to start off with.

Let us open the batting in terms of the need to keep it at the one-year periodicity—if that is the right word. What we have had from just about every area we have been is that, at the sharp end—the fishing end; the industry end—there is a lot of support for extending the one year. Mary, if we could just talk about the pros and cons of the periodicity.

Ms Harwood—There are obviously advantages to having a multiple year agreement, not least of all the expense and difficulties of pursuing the negotiations and the treaty process itself and also the stability in terms of certainty on both sides of the arrangements pertaining in the zone. The downsides, or the issues that need to be addressed in looking at a multi-year process, have two basic sides. The first relates to the international management of the southern bluefin tuna fishery.

While the commission operates on the basis of setting annual quotas, we only know each year whether quotas have been set and what the level is. Because Japan fishes part of its national quota in our zone under the bilateral agreement, we do not authorise Japanese fishing inside the zone until they have a national quota to be bound by. If the CCSBT were able to set multi-year quotas—and that is certainly something that Australia has proposed over recent years quite actively—then that would essentially allay that problem in terms of the connection to southern bluefin tuna quotas.

The second side relates to the matters of contention in the agreement. The level of interest in this inquiry is indicative of how intensely views are held on matters such as: by-catch, areas of access and the level of the fee—all sorts of terms and conditions relating to the Japanese operations. Also there can be quite marked changes year to year in what is considered acceptable in particular areas of the fishery. We would need to find a process that was able to deal with those changes and to respect that level of interest and concern from particular sectoral groups in the Australian community. That is, were we to lock in to specific arrangement for a longer period and then wish to change them, we would have to have set up a mechanism for doing that.

Another obvious issue is the fee itself and the uncertainty of tuna prices. So there are risks to both sides of projecting too far into the future what the likely prices for tuna are going to be. One way around that is to have some sort of formularised approach to the fees, so that it is generated by, for instance, a percentage on landed value of the catch by a price series. Essentially, those are all matters that influence the way in which you would construct a multi-year agreement. Probably the primary one, from a fisheries management point of view, would be the concern that access to the zone should be contingent on there being acceptable management arrangements in place for the global southern bluefin tuna fishery before access is provided to those stocks inside the Australian fishing zone.

CHAIR—What is your balance of view? In other words, should the status quo be maintained? For example, we are told that it costs something like a million dollars per year to re-negotiate. Wouldn't it be better for that money to be spent on research rather than to be used in re-negotiating mechanisms?

Ms Harwood—I think that estimate relates to the Bluefin Tuna Commission which operates with full interpretation and all the costs of an international commission. I presume that estimate must embrace every person's participation, et cetera. The bilateral negotiation costs are not extreme for us. The Japanese pay for interpretation. The process is quite simple in its essence. I think those costs relate more to the Bluefin Tuna Commission itself.

CHAIR—If there were a recommendation from this committee that it be extended with appropriate clauses so the thing could be negotiated in terms of quota or whatever, would there be violent opposition from departments?

Ms Harwood—I think it is quite feasible. The challenge is to establish mechanisms that cater for those issues that I was just looking at which enable you to have triggers or switches where you need them for addressing particular issues of concern.

CHAIR—My reading of what we have heard so far is that there is a balance in favour of extending it for a number of reasons, which we would obviously have to explore in a little detail in the report. It seems that there is too much work going into too short a period with too many potential clogs to the system which are perhaps not in anybody's interest. We have to look at the national interest in particular on this issue. Would anybody else like to ask a question on the agreement itself?

Mr Campbell—I would like to make one point. Bearing in mind what Mary said about this link with the commission and the commission making quotas on an annual basis, it would require some persuasion of other countries to move to a multi-year quota in the commission because it is made up of three members, being Australia, New Zealand and Japan. The second point, which I suppose is more minor, is that, in terms of cost, the commission agreement provides for an annual meeting of the commission to take place irrespective of whether they adopt a quota at that commission.

CHAIR—My understanding is that the global quota is 11,750 tonnes but we are only dealing in terms of this bilaterally with 600 tonnes, are we not?

Ms Harwood—Yes, 600 of that southern bluefin tuna plus a range of tropical tuna.

Mr McCLELLAND—Is it possible to include a rent variation clause whereby the rent goes up in reference to increases in the CPI? In other words, you would include a clause which refers to the Japanese quota in Australia as being linked to the commission's quota as determined on a yearly basis.

Mr Campbell—You could do it.

Mr TUCKEY—I think this particular situation arose from the concern of this committee that, because it was almost a continuous negotiating process on an annual basis, there was never going to be breathing space for this committee in particular to properly review what was being decided. One of the options, therefore, was that we could look at a two-year agreement reverting to a one-year agreement prospectively. In other words, you manage to advance the process into a second year and leapfrog it along in that fashion. What we were looking at was something that was agreed for next year, not this year. That is probably the fall back position which clearly a longer term agreement also achieves.

The area of our concern was, as in this case, that we are being confronted with a fait accompli because of the tightness of the negotiating period and, from what I gather, the length of it. There are those that extend it to the last possible moment in the hope of getting extra concessions.

CHAIR—There are two dimensions to it. One is that which comes from those who sit on this side of the table. More importantly, it was interesting to listen to the industry and to get their perspective. Their perspective was that in general they would prefer that it be extended. Do you have a view as to whether there is an optimum period? Mr Tuckey is suggesting that we recommend one year ahead and that we walk before we run rather than go to a much longer period. Do you have a reaction to that?

Ms Harwood—Given the rate of change in the fisheries environment, in terms of the domestic industry and issues relating to conservation, perhaps a two-year agreement would be a sensible scale to start with.

Mr Exel—I would like to make a quick comment. I think a two-year agreement would be good because my expectation would be that Japan will argue extremely strongly about whatever changes we propose and whatever we propose a year in advance. They will push that negotiation out so that at the end of two years we will be in a very similar situation. It will require some very careful wording.

CHAIR—Perhaps we should keep it as a rolling program.

Mr TUCKEY—That is my suggestion.

CHAIR—Maybe that is the way to do it. That is what we discussed at the first hearing with you. That might have been one avenue.

Mr TUCKEY—If you have that, you obviously need a cut-off date when negotiations must cease. Otherwise they will drag it into the second year on the basis that maybe some other concession can be achieved.

CHAIR—Unless anybody has any other questions on the agreement, I think it is logical to move to the data preparation in the data area.

Mr McCLELLAND—The evidence we received was that the data was much more accurate when there were observers on board. Some opinions were expressed that the observers are very thinly spread. A suggestion was made that an attempt be made to increase the fee paid by the Japanese in order to pay for more observers. Is that a realistic possibility worthy of exploring? If there a possibility of increasing fees to pay for more observers, for instance?

Mr Exel—You need to understand that the fee is the highest fee Japan pays anywhere for fishing access in the world. Increasing the fee to cover additional observers I believe would be very difficult. We already have some money that goes through to consolidated revenue. The level of observer coverage is very high for particular areas, and it is targeted at particular areas of concern—for example, the southern bluefin tuna off Tasmania, the north-east coast around the marlin spawning grounds and the west coast around the sail fish. If there were positive suggestions in terms of how people would prefer to see deployments, we are happy to take that on board. But basically it has been developed with particular aims in mind over the past 10 years.

The level of observer coverage is considerably higher than any other fishing operation in our zone and in our waters. When we developed the coverage for the Tasmanian region, it was actually determined statistically, which I think I mentioned in the first hearing. It gives a 95 per cent precision or confidence level of looking at those boats and how well that represents the rest of the fleet.

Mr LAURIE FERGUSON—What do you mean by 95 per cent confidence?

Mr Exel—What it means is that you can be 95 per cent confident that the coverage of observers you have and the information you are collecting reflects exactly what is happening in that fleet in that area. So if you are covering—

Mr HARDGRAVE—It is a mathematical, statistical—

Mr Exel—It is a statistical thing, yes. If you have observers on 10 of the boats, it

means you can guarantee that with 95 per cent certainty you are covering a representative sector of the fleet. So you can get a good idea of catch rates, et cetera.

Mr LAURIE FERGUSON—The overall monitoring is 15 per cent in total, isn't it?

Mr Exel—No, in terms of the observer coverage it varies from area to area.

Mr LAURIE FERGUSON—Overall it is 15, isn't it?

Mr Exel—Do you have the exact figure there?

Mr Rohan—The coverage this year is higher. Last year we were aiming for 15 per cent coverage in the Tasmanian region and the east coast and I think it was about 12 per cent coverage on the west coast. This year we are actually achieving a higher level of coverage of fishing days. It depends on what is actually being covered, but we are actually looking at a percentage of fishing days undertaken by Japanese vessels.

To address the earlier question of relevance of the observer program, it was actually assessed by an independent group last year to determine the cost benefit of undertaking those observer programs. That finding, which was undertaken by the University of Tasmania, concluded that it was a positive benefit and that the percentage of coverage was about right. I guess that means we could have a higher percentage of coverage but we may be wasting our money in doing so.

Mr LAURIE FERGUSON—Are these politely agreed, which ship is where, or do you do spot checks? Is that allowed by the Japanese?

Mr Rohan—We work out the profile of coverage that we require. It is based on a statistic. It sort of covers a number of issues, for example, the sort of area that the Japanese vessels will be working in. It is a spatial time thing—the area and time they will be working so that we get a reasonably representative cross-section of fishing by those vessels in those areas at various times.

Mr LAURIE FERGUSON—As indicated by the deputy chairman, there were indications from other witnesses that there were variations related to the presence of monitors. I am not sure today whether they were referring to the same boat the previous day or what the differences are. Can you put to us that there is going to be no correlation between monitors and non-presence—that that is all rubbish?

Mr Rohan—I am actually not clear on the issue, I am sorry.

Mr LAURIE FERGUSON—It has been put to us in Adelaide by the people connected with game fishing, et cetera, that the presence of monitors leads to

differentiation in regards to catch levels. You are putting to us that that is essentially rubbish, that there is no problem in that area?

Mr Rohan—I could not say for certain that there is no problem because we are working on a statistical sort of assessment. But we are confident that the coverage that we have is representative for a number of reasons. First, there had been—and I will put it in an historical context as well—difficulties in this area. There were demonstrated cases where the vessels which had observers on board had a different catch profile than those which did not have observers on board and it resulted in some prosecutions in 1990.

Since then, the method of handling the program as a whole has changed. We undertake pre- and post-fishing inspections now as well as putting observers on board. Observers also look at the catch data or the catch record of the vessel when they go on board. They may be on board a vessel for two to three weeks but they also look at the catch of the vessel before they joined the vessel. If there are anomalies between what they are seeing and what the vessel has recorded up to that point, these are matters which are brought to our enforcement attention when they are debriefed at the end of the cruise.

Those matters are then referred to our monitoring people who compare radio reports from the fleet which did not have observers with the figures we get off observed boats. So we do have some checks and balances which cause us to believe that we are not getting the same sort of abuse which had occurred in the past.

Mr TUCKEY—Just following that briefly, I understood the main area of concern in regards to reporting was in by-catch rather than in the quotas associated with southern bluefin tuna. There seems to be a substantial fluctuation in the reporting of marlin and shark and other things being caught and/or released whether there was or was not an observer on board.

Mr Rohan—We have figures for catches of billfish, for example, when an observer is on board. We can make comparisons, and do, with figures from the rest of the fleet without observers. To draw conclusions is difficult because often the by-catch of billfish is very small and the statistical relevance of a variation may not necessarily be due to misreporting. It is difficult to conclude that was the cause of variation. Sometimes the variation may be up on the fleet or down on the fleet compared with vessels that have observers on board.

Mr BARTLETT—We have had significantly different assessments of the stocks of southern bluefin tuna. Some groups suggest that they are very threatened and others suggest that the catch per unit effort is increasing as an indication that they are not threatened. What is your assessment on that and which of those is more accurate?

Ms Harwood—This is obviously at the heart of the current differences inside the Bluefin Tuna Commission itself. The differences in stock assessment relate to the way in

which the different scientific groups view uncertainties in the parameters that they are building into the stock assessment projections—the models they are using. So the assumptions that they use in analysing the fishery—and I might ask Mr Caton to give more detail—essentially relate to the interpretations and weightings you give to particular assumptions about the fishery and how you project its future status. By using different assumptions you will either come up with a wide range of projections or pessimistic projections or optimistic projections. So it is in how the stock assessment is done by the two sides that the problems and differences of view as to those inputs arise.

Mr BARTLETT—But this really is at the heart of the whole issue of what ought to be the way ahead in terms of ratifying this treaty and in terms of catch limits. If you are saying that it is based on different assumptions that really is not a very solid basis. If we are getting totally different assessments based on totally different assumptions which one do we rely on?

Mr McCLELLAND—South Australia was quite optimistic as to the volume of the fish out there. Perhaps Western Australia and Tasmania were more pessimistic as I remember.

Ms Harwood—We have complete confidence in the advice from the CSIRO scientists who are conducting the stock assessment for southern bluefin tuna. In the absence of agreement inside the commission, or a reconciled, combined scientific view of the parties, it is the CSIRO assessment on which we base our view of the fishery in a management sense.

Mr Exel—Could I add that perhaps the variation of responses is actually indicative as well because you are talking about a highly migratory species. So in a small area, for example, off South Australia in the Bight, you can see very good numbers of small fish, whereas off Tasmania, for example, they have had a very poor year in terms of larger fish and in the Indian Ocean, from what we understand from the observer data and so on, that has also been a poor year. So because the stock travels so far, you can get what appears, in a localised sense, to be an extremely healthy, rebuilding stock. Yet if you look at the picture overall, which is the commission's role, it ends up being widely varied depending on which scientist you happen to believe at the time.

Mr TONY SMITH—Mr Exel mentioned the fee was the highest that Japan paid. What countries are you comparing that highest fee with?

Mr Exel—Starting with New Zealand: in New Zealand they collect somewhere between five and six per cent of the landed value. The South Pacific nations are generally in the region of 4½ to five per cent, depending upon which nation, on a per vessel fee basis. Papua New Guinea sought to collect 10 per cent, and the Japanese actually left Papua New Guinea waters at that level. We are currently collecting—this is our estimate—nine to 9½ per cent, and this is estimated gross value of production. South Africa, we do

not believe, charges anything of any significance, because of other arrangements that are in place. Most of the American arrangements are in the region of five to seven per cent.

Mr LAURIE FERGUSON—You are talking about Caribbean type countries, are you? Dominica—

Mr Exel—No, I am actually talking about the northern fleets as opposed to the southern fleets. The Japanese fleets are right around the world.

Mr LAURIE FERGUSON—You are talking about negotiations with the United States, are you?

Mr Exel—With the United States.

Mr HARDGRAVE—Mr Chairman, I do not want to appear overly mathematical, statistically scientific or whatever, but I just wanted to raise my concern about some sort of potential sample error which could come through on the data collection side. How are the observer vessels chosen—by what methods?

Mr Exel—If I can go first: there are several methods. At the start of the season, a random stratified pattern is developed in terms of the areas that we intend to focus on and the regions of intensity are sought depending on what information is required. As the season continues, that pattern is broken down in part, and sometimes we will actually shift observers to target specific vessels that may appear to have different catch rates, if you like, from other boats—say, specifically targeted boats. But as much as possible it is kept to a random stratified sample in terms of the regions, areas, times, et cetera.

Mr HARDGRAVE—But specifically areas of concern which you want to focus on?

Mr Exel—That is correct.

CHAIR—Chris, we are on data collection. I think it might have been before you arrived that we went through the various areas in order. We are dealing with data collection at the moment.

Ms Harwood—Could I just make a final comment in relation to the difference of view on the stock assessment. It is important to realise that everybody agrees that the fishery is in a very depleted condition, that even the Japanese assessments have the current biomass at less than nine per cent of the levels of parental stock in 1966, when the fishery had already been heavily fished. So there are differences of view. But they are at the end of a steep decline in stock conditions. I just wanted to make that point because—

CHAIR—With one exception—sorry to interrupt you. There is one exception, and

we will come to it in a moment, and that is in terms of recreational fishermen. They have other views.

Ms Harwood—In terms of abundance?

CHAIR—Abundance, yes. They have some other views, but maybe they have some sort of magical statistical thing that nobody else has access to. We will come to that in due course.

Mr ADAMS—Is that figure nine per cent?

Ms Harwood—Yes. I think the range of percentage of parental stock remaining in comparison with the 1966 levels is five per cent for New Zealand, six per cent for Australia and nine per cent for Japan.

Mr TUCKEY—Mr Chairman, our dot point 11 raises the issue of the Koreans, Indonesians and Taiwanese tuna fleets with their estimated 2,000 tonne of catch. We would like some advice as to how that figure was arrived at and whether these countries are supplying any data to CCSBT.

CHAIR—Let us not forget the Chinese. The Chinese were not mentioned early in the hearing but came up very much towards the end, particularly after talking to the tuna boat operators. They are seemingly an emerging nation in this.

Mr Caton—Every year for the stock assessments and projections there is an estimate included for SBT catches by non-CCSBT countries. The major ones are Indonesia and Taiwan, and more recently it seems Korean vessels also. The main sources of Indonesian data are CSIRO and Indonesian joint monitoring programs, where catches landed in Indonesia are sampled for gonads—for reproductive studies. The fish are measured, and the throughputs in processing plants are monitored. From that an estimate is derived of the overall Indonesian catch. In 1995 it was in the order of 740 tonnes processed weight, which is about 840 tonnes of whole weight fish—all large adult southern bluefin.

The most recent estimates for Korea came at the recent CCSBT meeting in Canberra where Korean participants said that the 1996 catch up to September this year was, from memory, roughly 650 tonne. Over the past couple of years that catch had been in the order of 100 tonne, so there is a major increase in Korean activity. I would assume that is, again, processed weight because most tuna on long-liners and in sales in sashimi markets is dealt with as processed fish. Whole weight of the catch would then be 750 or so tonne.

The catch from Taiwan was reported by a Taiwan observer at the recent CCSBT meeting as 1,447 tonne. If you take that as processed weight it is something like 1,700

tonne whole weight. So all up there could be something like 2,800 or 3,500 tonnes, depending on what a full year Korean catch might be and whether they are actually processed or whole weight estimates.

In the recent assessments the tonnage for 1995 was assumed to be in the order of 2,500 to 2,600 tonne whole weight. As I mentioned, there has been a big increase in the Korean catch.

CHAIR—That is a total of 2,600 tonne?

Mr Caton—Yes. A tonnage of 2,588 was assumed in the estimates, and that was a whole weight—this is incorporated in the assessment. But, given the updates at the recent CCSBT meeting, I would say it could be more like 3,200 or more now.

CHAIR—But there is no PRC data?

Mr Caton—No, not at this stage. They have been expanding activities in the central equatorial western Pacific. There are small long-liners working out of Micronesian ports. I do not know to what extent they have moved into the Indian Ocean. There were certainly some Chinese vessels in Colombo in September 1995, when I was there. Three or four boats were using Colombo as a port. They were modified trawlers and gill netters. It is possible there are other boats moving through the Indonesian area from China.

CHAIR—I think the figures we had were possibly up to 2,000 tonne in each of those three. I think it was 6,000 for the three.

Mr TUCKEY—No, I thought that, after putting all the figures together, the 2,000 tonne was considered the aggregate.

CHAIR—It was 2,000 tonne. So what you are saying is that on the latest estimates it is 1½ times that?

Mr Caton—Yes. But, of course, those estimates are based on what countries like Korea report at the CCSBT. Otherwise we can look at imports into Japan, which are fairly carefully monitored. But, then again, that is probably an underestimate, given that there could be local domestic markets in Korea and Taiwan for sashimi SBT tuna. There may have been some Taiwanese SBT catches in the past that were taken by drift nets and went into canning with albacore because they were a poorer grade fish. Of course, monitoring catches marketed in Korea and Taiwan is a problem.

CHAIR—Let us move on from data collection. The next one is an area that came up and is a major area that we need to look at—I am sure Wilson will explore this—and that is in terms of port access.

Mr TUCKEY—I guess the biggest issue we confronted on port access was the chicken and egg situation of which comes first. We need your advice because it is very hard to establish whether the Japanese want port access to support their fishing effort per se or whether they use our ports because we give them access to the Australian fishing zone.

Of course, the other question that arises and which is probably hypothetical is whether they would continue to use the ports in their fishing effort per se if they were denied access to Australian fishing zones. Various people have argued quite differently about it, generally depending on what they get out of it. But an issue for us to decide and make recommendations on is whether or not we should continue to link the two together and what advantage there is in doing that.

CHAIR—I think the balance of view—and my colleagues may disagree with me—was that there should be a very strong push towards disassociating the quota from port access. We really need some guidance on that one.

Ms Harwood—Perhaps I could walk you through the way the linkages work at present and the ups and downs of changing them. Obviously the current policy is to link port and fishing access in a package in the bilateral agreement. That package is itself then linked to performance of quotas inside the Bluefin Tuna Commission. The linkage is in two directions.

In discussing port access we need to separate the two. It is possible to conceive bilateral arrangements that have port and fishing access in separate parcels in commercial arrangements but which are both still conditioned by performance in the Bluefin Tuna Commission or to separate the bilateral agreement itself, including port access, if we wish, from quotas. That would allow them to have port access regardless of whether there are acceptable management measures coming out of the Bluefin Tuna Commission.

The current linkage between port and fishing access does two things. The first is that it captures in a neat way the commercial benefits from both. There are definite benefits for the Japanese in having access to our ports. Other ports are a long way away. They lose fishing time. It is expensive to use Indonesia, Singapore or other ports particularly for the southern bluefin tuna fleet which is operating in the southern latitudes.

It is also expensive for them to use alternative arrangements, such as the bunkering vessel, that they used in the last year to support the boycott on Australian ports. There is no doubt that there is commercial convenience and, from the individual vessel operator's point of view, a lot of pluses to them using Australia ports, including the facilities and the services available.

Those benefits are captured in the single lump sum fee. Then it is essentially Japan's choice as to how it partitions that fee amongst the vessels that use our waters and

our ports. We understand that when they partition that fee they charge the vessels that are using just the ports a lower amount and the vessels coming to fish pay a higher amount.

There are two reasons they would like to sever the linkage. One is that the administrative burden is significant. They would like to have a simpler arrangement whereby port access only vessels come in under a simple arrangement and pay the simple administrative fee, separate from the complications of fishing access. The other is obviously wishing to break the nexus of port access with performance in the Bluefin Tuna Commission.

One of the advantages with the way the policy currently works is that Australia is not open to any charges of discrimination in the way we operate our port access policy. It is a firm policy. In simple terms, it means that unless you have fishing access to Australian waters you do not have access for unlicensed fishing vessels.

Were we to have that separation and to move Japanese access into a separate arrangement so that essentially unlicensed Japanese fishing vessels used our ports, we would then, under some principles as I understand them in the law of the sea, be obliged to provide similar benefits or similar access to vessels from other countries. We could not say that we will just have Japanese vessels in our ports and no-one else.

That then brings us back into the world of the Bluefin Tuna Commission. As a party to the Bluefin Tuna Convention we are legally obliged not to facilitate the operations of other countries operating outside the regime of the convention. We cannot provide a base camp for vessels from other countries fishing southern bluefin tuna in the Indian Ocean.

Mr McCLELLAND—Other than Japan.

Ms Harwood—Other than friends—countries that are in the commission. I know we are walking a complex path here. But were you to separate fishing access out to be that simple access was provided for unlicensed Japanese vessels to our ports, we would be under considerable pressure to provide those same privileges to fleets from other countries who are fishing in an unregulated and increasingly unconstrained—in some cases—way on the very resource on which we have a $100 million industry dependent. It is a complex issue.

In making that decision, you are balancing the obvious commercial benefits of having Japanese vessels using our ports with our obligations under the international convention and our desire to influence for the better the management of the global southern bluefin tuna fishery. If there is unfettered fishing in that fishery and the stock collapses, there will not be any boats in the future using the fishery or the ports. It is a complex issue.

Mr McCLELLAND—What about if you restricted the access to licensed Japanese vessels. By licensed, do you mean licensed with the commission?

Ms Harwood—No, licensed by Australia. That is the distinction that works at present. The current arrangement is that they have fishing boat licences. The port-only access boats do not have fishing access to the core areas of east coast Tasmania or Western Australia. But they do have a fishing license and that also is very convenient for us in terms of monitoring and surveillance and so on. If there is a Japanese boat in the zone, it has to have a licence. If it has a licence, then from a monitoring point of view, it is a very simple arrangement to administer.

If we were looking at a separate port access arrangement, we would wish still to place a number of monitoring conditions—for instance, satellite-based vessel monitoring and the rights to inspect. These would all still pertain if we were to maintain the integrity of our management arrangements. Essentially, the question comes down to whether Australia wishes to be in the position of facilitating unregulated fishing access, either by Japan—if it has failed to agree to quotas—or by other countries who could strongly ask to be there should we move to an unregulated or an unlicensed form of port access.

CHAIR—As I think Wilson Tuckey indicated, we have had a lot of anecdotal evidence which indicates that perhaps by doing this you would open it up. But, on my understanding, you have introduced a new dimension. I am interested in what Bill Campbell has to say as to whether there is an UNCLOS implication of doing that. Is that what you are saying? If we were just to sort of separate it, we could be accused of contravening the law of the sea.

Mr Campbell—Generally speaking, subject to the 1923 Maritime Ports Convention, which was mentioned on the last occasion, a country has a right to control the access to its ports. The one major exception to that is that where a vessel is in distress they must allow the vessel into a port. Generally, I suppose you could derive some inference from the law of the sea convention that you should not treat foreign countries and their vessels in a discriminatory manner. If I could take that on notice, I would like to think further about whether we could say to one country whose vessels are unlicensed, 'You can come in,' but say to another country, 'You cannot come in.'

Mr McCLELLAND—I have just a second point. You could distinguish your approach according to whether those countries submitted themselves to your licensing requirements. For instance, if a Chinese vessel wanted access, you would say, 'Look, you can have it if you are licensed by our authorities. The precondition is that your country must be a signatory to the commission'—in other words, have a rationale to your discrimination.

Mr Campbell—I certainly think it would be possible to do that.

CHAIR—It is a legal dimension which we have not—

Mr Campbell—But I have got to say there are various constraints on port access which are set by the Fisheries Management Act itself. It is an offence for a foreign fishing vessel to come into an Australian port except under certain circumstances. They have to have either a licence to fish which is endorsed to come into a port or an agreement between Australia and another country which is a prescribed agreement allowing port access. Alternatively, there is actual provision in section 94 of the Fisheries Management Act to grant port permits to unlicensed foreign fishing vessels but only for a specific purpose where it says: 'if it would be appropriate to do so for the purpose of monitoring movements of foreign fishing boats'.

CHAIR—But one would assume, Bill, that the Fisheries Management Act would be very consistent with UNCLOS. It would have to be, would it not?

Mr Campbell—Yes, that is right, it would be. But the point I am making is that it seems that the avenues open if you are not a licensed fishing vessel under the Australian Fisheries Management Act are to have an agreement with another country which allowed that access to occur or you would actually have to get a port permit—but you could get the port permit only if it was appropriate to do so for the purpose of monitoring the movement of the foreign boat and not just port access generally.

CHAIR—Okay. Could you take that on notice.

Mr TUCKEY—I just wanted to follow that through in a couple of areas. I assume that our concern with port access, therefore, really relates to the question of what do you do with a boat that is not licensed to fish in our waters that is sailing through them and when you pull them up and say, 'What are you here for?' they say, 'Oh, I'm going to your port.' And I guess that is a problem that we would find difficult without a licensing process. We have asked some questions which are confined to another part of this documentation today about the benefits of attempting to get volume controls at the point of consumption rather than at the point of catch—the 'kangaroo tagging concept'.

Considering the economic benefits that it has been made very clear to us accrue to the engineering and other sectors in servicing fishing boats that choose to come into our ports and diddling and all of the things—and there is a high degree of enthusiasm for that, particularly with Japanese boats because they seem to be the best payers—the reality is that, I guess, if we had more controls on where fish were consumed then, of course, it would be easier to be more generous with access to our ports.

Ms Harwood—I guess the issue there is that the major market is Japan, so if it is Japan's fishing behaviour or cooperation in management which is at issue action in the Japanese market is not likely to be an avenue for fixing it.

Mr TUCKEY—When one considers two, three, five thousand tonnes slipping out the backdoor through participant fishing nations that are not signatories to the commission treaty, would we be better off conceding the Japanese another 1,000 tonnes on the grounds that they implemented that policy and then, of course, you would actually catch fewer fish?

Ms Harwood—Sorry, I may have misunderstood your question to be: if we wish to influence the Japanese fishing patterns or activity, we could do so at the market end. But if you mean a broader question of whether there is scope for some sort of trade based measures relating to influencing management in the fishery, that is something that has already been built over the last few years quite strongly into the ICCAT regime—that is the International Commission for the Conservation of Atlantic Tunas—and step by step they have been building a certificate based regime which discriminates against tuna caught by non-parties to ICCAT.

So, it is something that the commission itself could explore in terms of establishing a certification regime that, first of all, identifies where tunas are coming from; where some bluefin tuna which is entering, say, the Japanese market in particular, comes from and then, down the track—WTO and GATT permitting—it could then look at the mechanisms for how you might use that as a lever to move people into the bluefin regime, the commission regime.

Mr TUCKEY—If I could just develop that point. There seem to be two opportunities to sell a tuna: one is into the Japanese sashimi market, which is very lucrative; or it is cat food—or slightly superior to it—which, of course, is not lucrative at all. It just strikes me that, if we have this growing illegal trade, it might be the ideal time to try and negotiate a deal that says: let us talk about southern bluefin—or any of the others, big eye or anything that is particularly attractive to that high end of the market—with the idea of them basically having import restrictions based on quota. Then it gives us the opportunity to relax some of our other conditions which might attract other sorts of business into the bargain. Mostly, I am attracted to the fact that that way, if it were achievable, gives you, not absolute, but close to absolute control as compared with the current arrangements.

Ms Harwood—There are two issues at stake. One is, while there may be some enthusiasm on the part of Japanese fisheries authorities for those sorts of trade based measures already, there are people who look at them seriously in terms of how they might be used to influence the fishing activities of other countries. Whether it would survive broader scrutiny, either within the Japanese system or in the international trading system, is at issue.

Mr TUCKEY—Okay, let me say that the job of this committee is to recommend things and give someone else the job of working it out. But we would like to explore these options which we may raise as matters for consideration.

Mr ADAMS—I think that would be a part of our recommendations, certainly, to look at this, as a certification. It is applying in other fisheries, it is applying in other ways around the world. I do not see why it could not be a part of the fishery. Do you see it as a difficult situation, other than the entry situation into Japan?

Ms Harwood—No, I think that a certification scheme, if it is set up well, will give you, first of all, better information than we have now on how much is being caught by whom, and how much is entering the markets. This is so certainly for the Japanese market; there are growing sashimi markets in Taiwan and Korea in which it might prove more of a challenge to administer such a scheme. But I think it would definitely give you better information about how fish is being caught and increase the profile of the bluefin regime overall, the convention regime.

Mr McCLELLAND—You might get a few more signatories, do you think, to the international convention?

Ms Harwood—If they felt the heat building, as has occurred in the ICCAT case, that is possible.

Mr Exel—The tagging regime has, in fact, been looked at for about the last six or seven years. The biggest problem with the tagging, from an Australian domestic point of view, is that it means all of our fish have to be certified as well in the first instance, and the cost of that is not small to industry. The second is that the only point of control of those certificates is the Japanese customs as the fish are imported to Japan. The third point is that the marketers are very different to the actual fishermen, and—Mary mentioned the Japanese government fisheries authority—there is a major rift in Japan where marketers want supply; they are not interested in preventing supply from Korea, Taiwan or whomever else it may be, notwithstanding how much the fishermen may want actually to control some of that.

Lastly, part of the increase in catches by other nations is directly linked to decreases in quota that we have undertaken, and as the Japanese quota was decreased significantly the catches by other nations increased at almost exactly the same time. In fact, there was about a four or five month lag. That occurs basically through either re-flagging of vessels, where Japanese vessels fly flags of countries of convenience, or through simple Japanese/Korean company interactions where, all of a sudden, the catch is being taken by the Korean company and not the Japanese.

So while I think that, in theory, the certificate and tagging schemes can be very successful, what we are talking about really is a major monopoly in the markets. Tagging regimes are very expensive and very difficult from an Australian industry point of view. The estimate was somewhere in the region of $900,000 per year actually to certificate adequately the Australian export of tuna. That was done five years ago, so recommendation is fine but I suppose I am just pointing out—

Mr TUCKEY—Let me say that your statement has convinced me more and more of the need when you come from a conservation point of view. What you basically just told us is that our efforts are for nought because we have put the quota on and everybody else has slipped around the back door and got it outside the quota.

Mr Exel—I think there is no question at all about that sense of frustration. The question is: who or what scheme can you use actually to tie it up if what you are doing is giving the scheme to the people who are in a position to manipulate it most? You actually need to think about it very carefully and to set it up in a way that it can be well monitored by us.

Mr TUCKEY—I work on the principle that we flew a man to the moon.

CHAIR—I think it is an issue we will have to raise in the report.

Mr Exel—Absolutely.

Mr LAURIE FERGUSON—It seems like a fairly convincing indication that the whole thing is a total waste of time if you are saying that we have these negotiations with the Japanese and we have monitoring and we know roughly what is happening and then, essentially through interconnection between Japanese and Korean companies, they get around it. You are pointing out the extent that it is a serious impediment to this other suggestion so therefore it must be of some moment. Essentially, the whole process of having the Japanese involved in this seems to be fairly well undermined by your statements.

Mr Exel—No. In fact, that is exactly why we are trying to get other nations to sign on to the agreement—Korea, in particular—

Mr LAURIE FERGUSON—To an agreement you tell us is effectively not operative.

Mr Exel—No. What is happening at the moment is that there are countries outside of it. We are monitoring it and, as Mr Caton mentioned before, we are actually setting up around the world at the moment—we have one in Indonesia and we intend to set one up in Taiwan—monitoring arrangements direct on the ground with Australian involvement so we are able to verify what is going on.

Mr LAURIE FERGUSON—So we introduce Thailand and Korea and we then set levels and, essentially, we have diversion to other countries if we are too difficult in the limits we set.

Mr Exel—That is correct. It is a significant problem with any international agreement involving highly migratory species.

Mr TUCKEY—There is only one country that pays a good price for them.

Mr Exel—That is right.

Ms Harwood—At a broader level, that issue is the reason the compliance agreement was introduced. It was negotiated about three years ago and it was intended to address this very problem of re-flagging to avoid international fishery controls. This problem is not unique to the bluefin tuna fishery. Globally there was a very powerful intent, including active involvement by governments like Korea, to change the practice of re-flagging and to make it harder to do and to regulate it.

The FAO compliance agreement and the UN straddling stocks agreement both have powerful provisions. As those agreements enter into effect and more countries join them and they take effect, they are intended to start to essentially close the net on those sorts of activities. It is not going to happen overnight.

Mr ADAMS—Could you say, for instance, to Japan to forget the rest of the bilateral agreement; we will give them port access providing they enforce a system where they only sell tagged fish on their market and that they allow our inspectors to come into their market to make sure they are only selling tagged fish? Is that fanciful?

Ms Harwood—Fairly.

CHAIR—Having visited the Tokyo fish market myself, I think that is quite fanciful. I think we have had enough on port access, other than to make the final comment that the Tuna Boat Owners Association was very strongly of the view that we should sever the link between port access and the bilateral arrangements. What is your general reaction to that?

Ms Harwood—Maybe I could give an example which is relevant—that is, the Grand Banks off Canada. I am sure everybody is aware of the collapse of the cod stocks there. Canada used to have an open port access policy and provided access to trawlers from Spain, Portugal and other countries that were fishing on the nose and tail outside the Canadian zone. Canada then moved to change and tighten up its port access policy to confine it to only vessels and countries which were in full compliance with the NFAO regime. Essentially, we are talking about the same situation here. Although port access has been, in the past, quite relaxed in some countries, there are moves in a number of countries to use it more. A very significant power of a coastal state is its port state rights. That gives you a picture of why and how people use it.

CHAIR—Let us move on to exclusion zones. I think we should say right from the word go that the major issue here is the 12 to 50 nautical miles zone. We have a strongly worded letter from the Premier of Tasmania supporting that approach.

Mr ADAMS—I would like to know whether there are any zones where Japanese

boats can operate and Australian boats cannot?

Mr Exel—There are no areas where domestic fleets are unable to operate and the Japanese can.

Mr ADAMS—What is the situation around Rottnest Island?

Mr Exel—We introduced a 50 nautical mile circle around Rottnest Island about four or five years ago. There is now a complete 50-mile exclusion zone off Western Australia from top to bottom. Boats cannot come in there.

Mr ADAMS—Are the Japanese excluded from areas in Australia where marlin spawn?

Mr Exel—Yes, they have been excluded. We have even increased the size of the area of exclusion of the marlin spawning grounds.

Mr ADAMS—The Western Australian government and the Tasmanian government have asked for a 50 nautical mile zone around their states and around their coasts. What are the chances of these requests being accepted and put into the agreement? We demand that they go into the agreement.

Mr Exel—As I indicated before, Western Australia already has the 50-mile exclusion, so that is not an issue. In terms of Tasmania, there is currently a 12-mile exclusion. That was actually raised during the negotiations last year. We put Japan on notice that there may well be additional exclusions. The biggest difficulty we have, from a management point of view, is that there appears to be very little justification for moving out to 50 miles, when that in fact encompasses almost all of the fishing around Tasmania. Between 12 and 50 miles is the main Japanese fleet activity. Compared to that, the total catch off Tasmania by domestic fleets is—

CHAIR—That is not the evidence that we had in Tasmania.

Mr TUCKEY—No. When we were in Fremantle, the bloke who had his Japanese-style long-liner said that he thought that they caught most of their best fish in close. There was quite conflicting advice actually.

CHAIR—Yes, there was.

Mr Exel—Depending on the time of the year, there is one area off the north-east coast of Tasmania where they fish quite wide—that is, 75 to 80 miles out to the edge of the zone.

The majority of Tasmanian fishing is by very small vessels. There is the one

Western Australian owned Japanese style long-liner and the total catch is extremely low from an Australian point of view. So the conflict is not there. The actual level of activity, if you like, or prevention of activity, is a total of 10 Japanese vessels for the bilateral agreement. Only 10 boats fish that region around Tasmania.

CHAIR—My understanding was that, in Tasmanian waters, there were very few, if any, that came in further than about 60 nautical miles.

Mr ADAMS—That is right. I think that was the evidence received. There are five Tasmanian boats that are fishing and several others, I think, that are interested in the possibility. We did have evidence that there is the opportunity of gear being cut across and those sorts of things. That was the evidence we received. So that would be the argument to seek a 50-mile zone. Your comments would be welcome.

CHAIR—If I could add something else there. I guess what we are looking at is the balance between the advantage to the Tasmania fishermen, albeit that that is quite small at this stage even though they are talking about lots of things like freezer access, which we will come onto in a moment, and the diplomatic potential if we were to suddenly say, 'Well, as part of the bilateral, in Tasmania it is 50 as well.' I think that is the bottom line to what we are about. If we were to recommend 50 nautical miles full stop, what would be your assessment of the impact on the bilateral?

Ms Harwood—I can speak from having raised the issue of these area exclusions in the recent informal discussions we had with Japan. I think it would be a very strong reaction—that is, I think they would consider that to be a very serious reduction in attractiveness of fishing opportunity to push them out that far. They said so very strongly, even when we were raising 15- and 20-mile exclusion zones, the same argument is made: that that would substantially reduce the attractiveness of the fishing.

CHAIR—What evidence do you have in terms of the monitoring, in AFMA, for the number that are taken outside that 50-nautical mile limit in terms of their catch in that area? I mean, if it is a large proportion, then surely it does not have any impact.

Mr Exel—That is correct. That is what I was saying, the vast majority of it is caught inside that zone.

CHAIR—In the 12- to 50-mile zone?

Mr Exel—That is correct. The gear conflict is a very valid issue. If there is substantive gear conflict, that has, in fact, been a reason for us to create closures in the past. We had one report last year of gear conflict and it was actually not off Tasmania. Where gear conflict is advised to us, we will try to follow it up immediately if we can work out who, when and where. But, certainly, it becomes an issue that is raised at the negotiations when we are talking to the Japanese and is a very clear reason to create

exclusion areas. From our point of view, we do not particularly want Japanese boats coming in and creating difficulties with domestic fleets. The value of access is not that high.

CHAIR—What tonnage is taken within Tasmanian waters between that 12- to 50-mile zone? We relate that to the 600.

Mr Exel—I would have to take that on notice, I do not have the actual catch figures.

CHAIR—But off the top of your head, is it small, very small, substantial, or what?

Mr Exel—At a guess it would be 450 to 500 of it.

CHAIR—Of the 600?

Mr Caton—The 600 tonne limit consists of 200 tonne off New South Wales, north of 34. The 400 tonne is the Tasmanian component. There is one other issue. In the past, when joint ventures operated, there were many more boats working in the area and there was probably more scope for interaction. With the cessation of the joint venture operation and the cutback to the number of boats operating there to about 10, there is less crowding of boats close in along the region on the east coast.

But from the distribution of fishing, you can see most of the locations of fishing are towards the inside of the zone rather than towards the outer edge of it. I do not have a catch breakdown. The other complication is that you get one point on the Japanese log book per day. A Japanese long-line can be 60 miles in length. So the big problem is working out just where the gear is set relative to the reporting point. Looking at the scatter of reported points, most of them are within 100 miles of the coast rather than on the outer side.

CHAIR—But you will understand that, as far as the committee is concerned, we have to balance the indigenous implication in relation to the diplomatic and the bilateral thing. At this stage, I do not think any of us has a further feel for whether there is a balance of view. Without quantifying it, you are saying that that would have a major impact.

Mr Exel—There is no question at all. A 50-mile exclusion off Tasmania is a major change in the bottom condition in the shelf off Tasmania, in the aggregation and in the areas where the fish occur most.

Ms Harwood—It is going to have an impact on the level of interest and, presumably, by virtue of that, the level of port usage and so on.

CHAIR—We do not want to get into areas tonight that may be too sensitive for an open hearing, but our understanding of what has happened in the last week to 10 days does not auger too well for the future.

Ms Harwood—We have yet to agree on quotas for this year in the commission.

Mr ADAMS—You have told us that a fair amount is caught in the 50-mile zone off the east coast of Tasmania. We were given evidence that there was a lot of fish taken in the south of Tasmania.

Mr Exel—Yes, that is correct, that is over the summer period. The fish there are much larger. They catch fewer in number, but they are very high quality fish. That tends to occur in November, December and January and tends to be the target of joint venture vessels now as opposed to bilateral.

Mr BARTLETT—You have said that the vast majority of the fish taken is inside that 50-mile zone. Is it possible that that is simply because it is easier to catch them there and if they were excluded they would still fish, albeit with a little more effort, and catch successfully outside of that limit?

Mr Exel—Yes. The whole aim of the fishing obviously is to target the highest catch rate area.

Mr BARTLETT—So it is quite likely then, when you say there would be a major impact if we excluded them from that zone, that they would still probably fish the hard-line and their response at the moment is probably just part of a fairly tough bargaining process?

Ms Harwood—I would not be convinced of that at all. I think that you would be placing the million dollars worth of access off Tasmania clearly at risk—that is, that they might just say it is not worth the candle of coming in at the rates that we charge for southern bluefin tuna to fish in those areas further offshore.

Mr BARTLETT—So you really see that as a very significant risk? That is certainly contrary to the evidence that we had in Hobart. Their estimate there was that they would still come, that it is attractive enough that they would still come even if there was a 50-mile exclusion zone.

CHAIR—Parochial as it might be.

Mr BARTLETT—Yes.

Mr Exel—No. I think that is a valid approach in terms of that being their reading in the situation. But I notice the letter from the premier—and this is the sort of difficulty

we always have—says: please push them out to 50 miles but only if that does not mean they are going to leave our ports. Trying to work out where the balance is, is really a very difficult situation.

Mr ADAMS—It is a diplomat's job.

Mr BARTLETT—What would you think of a compromise of say 20 or 30 miles? Has that been considered in much detail?

Mr TUCKEY—Or, alternatively, sort of slots. I mean you do not have to draw a 50-mile circle around, but relatively close to the major ports of Tasmania; you could go zap and say 'Right, between that north and south latitudes it is a 50-mile circle, but each side of that it is still 12.' That is another option that makes it a bit more attractive to the local fishing.

Mr Exel—We have done that exact thing off Western Australia. From AFMA's point of view, we tend to do it in terms of the objectives of our act. So what we are looking for is whether there are either demonstrable biological or economic interactions. The level of activity off Tasmania is very low now. I suspect it may well grow if they purchase more quota, for example. We have already considered a further exclusion to the level of 50 miles.

CHAIR—Is there something you can talk about from the latest negotiations? Has this issue come up specifically or just in general terms?

Ms Harwood—Last year we put them on notice that there was an issue off Tasmania in terms of a push from the domestic industry to exclude them further offshore. We had very short, informal bilateral talks last week and raised it again in terms of working through what might be the punitive conditions around the zone if there was to be a bilateral agreement, and it was discussed in fairly strong terms there. They expressed a very strong view that exclusion out to 50 miles would make access unacceptable.

CHAIR—Surely the bottom line for this bilateral is that in due course the local industry will pick it up. Would we be moving too quickly in suggesting that it go from 12 to 50 miles?

Mr TUCKEY—Mr Chairman, I think you are probably pursuing this past the point that is reasonable. I think the picture is made very clear to us. The decision in terms of a recommendation has to be one we have to make when reviewing the evidence. I am aware that we have had some very conflicting evidence on the availability. We have probably pursued this issue as far as we can. The advice to us is pretty clear: the Japanese do not like it and the Tasmanian fishermen think it is great.

Mr ADAMS—I wanted to make one point. The Tasmanian fishery would probably be a fresh fishery as opposed to a frozen fishery. Therefore, the fresh fishery would be a premium price fishery as opposed to a frozen fishery. Is that correct?

Mr Exel—Absolutely. In fact, the small Tasmanian operators have sought in the past to get funding assistance from the Tasmanian government and from the Tasmanian development authority unsuccessfully. Their biggest impediment has been an inability to purchase quota, and that is Australian domestic quota.

CHAIR—Ms Harwood, do you want to make a final comment on this?

Ms Harwood—With each of these issues, when we are working at the margins of access it is obviously a balance between the amount that you reduce the attractiveness of the fishing opportunity and the benefits and the way in which you pursue issues such as progressive exclusion.

CHAIR—Are there any questions in terms of the commission?

Mr McCLELLAND—No, I think we have covered it. If Korea and Indonesia ended up joining the commission for the conservation of SBT, would that add to the pressure to increase the overall international quota? Or do you think you can hold the quota and let them in?

Ms Harwood—I think not. I think it would have a positive effect. It would provide a much greater scope for constraint of the international catch. They are already fishing outside the regime. The question is, in bringing them into the regime, where would that take the TAC and the national allocations? From that point on, however, you would have them within a committed regime under the law of the sea to manage the fishery sustainably. Your chances are much better of having a well regulated fishery if they come into the regime than if they continue to operate outside.

Mr TONY SMITH—I might preface this question by saying that I have not been terribly satisfied with the determination to eliminate by-catch. There seems to be a culture of minimisation rather than elimination. In that respect, we have had some conflicting evidence of seabird by-catch. When we are talking about, in some cases, 100-year-old albatrosses, we are not talking about something that is insignificant. The CSIRO provides statistics indicating that in 1994 known catch rates of seabirds amounted to about 186 by Japanese vessels and 10 by domestic fishers. However, in a submission by way of advice to the Minister for Environment from the Endangered Species Scientific Committee, the albatross kill in Australian waters south of 30 degrees south in 1994 was approximately 6,500 birds. Can any of you suggest why there appears to be such a considerable difference in the assessment of birds taken between different sources? What is the realistic estimate of the take of seabirds, in particular albatross, in the Australian fishing zone by Japanese and Australian long-line fishers?

Mr McNee—There is a difference in a number of the estimates that have been made for different catches. They tend to arise from the manner in which the estimates have been made and the particular types of data that have been used. There has been quite a bit of work from CSIRO and, for example, this publication which relates to Japanese long-line seabird by-catch in the Australian fishing zone between April 1991 and March 1994. That looks at the Japanese data only, because generally there was very good observer coverage that allowed fairly good estimates of the seabird catch rate. The differences in estimates tend to be a function of the availability of data and how the things are determined.

Mr TONY SMITH—Under the Convention on the Conservation of Migratory Species of Wild Animals—the Bonn convention—in respect to albatrosses, the Australian Nature Conservation Agency funded in 1993 a review titled *Cooperative mechanisms for the conservation of albatross*. Could the committee get a copy of that review?

Mr McNee—I am happy to table it.

Mr TONY SMITH—Does the convention offer an alternative manner of addressing the albatross situation? Should the bilateral agreement in relation to tuna long-line fishing between Australia and Japan fail to be renewed?

Mr McNee—I do not think, from our perspective, and I suspect from the perspective of DPIE and AFMA, that it offers an alternative. What the Bonn convention was clearly set up to do was develop cooperative mechanisms for the conservation of migratory species. It is our view that the Bonn convention would be a useful component in a framework to address these issues. The manner in which it addresses that is, for example, that although Japan is not a party to the Bonn convention, under the Bonn convention regional agreements for the management of migratory species—in this case, albatross—it is possible for Japan to become a party in a cooperative way to those types of agreements.

We would see significant capacity in two particular areas of the Bonn convention to enhance this particular area. One is we have a very poor global understanding of what is happening with albatross populations. So we have numbers of albatross that do not nest or breed within the AFZ but in fact nest in other countries. This means it is hard to work out from that snapshot what is actually happening globally with albatross populations. The Bonn convention provides a cooperative mechanism where a number of countries can cooperate to determine what is happening globally. Equally, there is a mechanism that allows an international group that would then cooperate or seek the cooperation of the parties that were fishing under the particular conventions and start to address those things cooperatively.

Mr TONY SMITH—Tori poles, it was stressed to us on the last occasion, are obviously mandatory, but their efficacy has been called into question and indeed using the

language that you have been using—you were using on the last occasion—of minimisation, it seems to me that you are accepting that there is a doubt about the efficacy of Tori poles. Therefore, why are we not insisting on far more effective systems such as bait throwing devices? In particular, I am reminded of apparently some development and field testing of bait throwing equipment funded by ANCA in 1993. Are those results available and what would be the implications of adding a requirement to use bait throwing devices to the bilateral agreement?

Mr McNee—In answer to the first question, the project reports from those we could make available. That would be no problem. In response to the second question, the issue of other mitigation measures and in fact the efficacy of existing measures like the mandatory deployment of Tori lines is something that we are definitely considering in the context of the threat abatement plan; to basically look at what suite of measures would be best suited to reducing albatross by-catch mortality. That is certainly occurring as part of the process of the development of the threat abatement plan.

Mr BARTLETT—Could those measures be also applied to their fleet on the high seas in addition to in the AFZ?

Mr McNee—That would be a question for Japan.

Ms Harwood—Essentially, with Japan as flag state on the high seas it is only through regulation of their high seas fishing operation that that could occur.

Mr BARTLETT—But is there any way that treaty could be used to apply pressure there?

Ms Harwood—Only by agreement, but yes, we are very active in the commission in seeking action on seabird by-catch. It could happen through the commission but only by agreement from Japan, essentially.

Mr TUCKEY—What publicity does this by-catch problem get in Japan? Their younger people are, it appears, getting pretty conservation conscious and I wonder if the right sort of articles could be published over there—and probably for free, if they are not. But one might wonder just how we are dealing with that particular matter. In other words, could pressure be applied from within?

Ms Harwood—It is not something we have investigated. I am really not able to comment on how the albatross by-catch is perceived by the Japanese populace.

Mr Exel—There have actually been a number of publications and in fact Japanese cartoons made about ‘Catch fish not birds’. As Mary just mentioned, it is given out to all the fishermen and it is also distributed in Japan in all of the agencies. Nigel Brothers, who comes from Tasmanian National Parks and Wildlife, has actually been doing a lot to

promote changes in the overall culture, if you like, towards seabird catches.

In terms of the earlier question about bait throwing devices, AFMA have actually made it compulsory to put on Tori poles and we got a considerable amount of resistance to that from conservation organisations and, in fact, the people who designed and developed both the Tori poles and the bait throwers. We have been asked not to make it a mandatory requirement for those vessels because they would prefer to see it introduced on a voluntary basis because then it may well actually get used on the high seas.

To date there have been—from my last discussion with Nigel Brothers—around 40 or 45 bait throwing machines actually purchased and installed on Japanese vessels. How many of them are used on the high seas as well as in our zone I am afraid I have no idea.

Mr TONY SMITH—What about even a requirement for setting the lines at night? We have heard some evidence about that. I just get the feeling that it is not regarded as seriously as I would hope it would be in the negotiations because of the terminology of minimisation being used rather than elimination. One bird is one bird too many, in my view. This is something that is very serious. There are all these measures, but we have been told that there would be no birds at all caught if you set lines at night. One witness has said that.

Mr Exel—That would be true for albatross. You would get no albatross, I believe, if you set at night; however, you increase your catch of shearwaters and several other species.

CHAIR—I think that was the evidence we had.

Mr TONY SMITH—But the albatross is the bird that is most seriously under threat here on all of the evidence.

Mr TUCKEY—Nevertheless, it came up in Perth, for the first time, that there was an economic reason why the industry needed to protect its bait from the birds. As one fellow said, 'If we don't catch a bird with our first attempt, they usually get three or four of our baits or even more before they end up on a hook.' It seems to be two-sided. The other evidence provided in Western Australia was that the bait throwers were very effective and the companies that were installing them thought they were a very good measure.

Mr Exel—Yes.

CHAIR—They are produced by Ballarat. Is there anything more in that area?

Mr ADAMS—Just on the birds: do shearwaters get on these hooks at all?

Mr Exel—I believe the number quoted before of 6,500 was all birds in total. Hence, the difference between a couple of hundred in the CSIRO study and the 6,500 in the endangered species scientific subcommittee.

CHAIR—I was given one figure of 40,000.

Mr TONY SMITH—That was worldwide.

CHAIR—It was worldwide, was it?

Mr TUCKEY—Mr Exel could tell us what it is.

Mr Exel—It was actually 44,000. It was an estimate made by Nigel Brothers if you combine all of the long-lining. It was about six years ago—1988-1989. He just extrapolated a catch rate of albatross to 44,000.

CHAIR—But that is a worldwide figure.

Mr Exel—That is correct.

Mr ADAMS—Has this report been circulated to all members?

Mr TUCKEY—Yes, I think we have it in our latest papers.

CHAIR—Yes, I think we have that. Any more on by-catching?

Mr LAURIE FERGUSON—Wilson Tuckey has covered the accreditation. Given that Japan, Korea, Indonesia, et cetera, are all parties to CITES, would the listing of southern bluefin tuna species assist in the monitoring of catch levels?

Ms Harwood—This is listing under CITES. I presume you mean appendix 2 where trade is still possible. It raises a lot of broad issues in relation to what is the best mechanism for securing more effective management of southern bluefin tuna and whether passing some control or measures into the CITES forum does that. It is a broad issue in terms of CITES regulating trade in large-scale primary commodities such as marine fish or tropical timbers and things of that sort. There are issues there in terms of the sheer volume and practicalities of regulating trade through the CITES mechanisms in a large-scale commercially traded product of that sort.

The next level of question is the extent to which a CITES based system would give you a greater degree of information about the catches and product flow. Obviously, it would provide some improvement to your information about levels of catch and product movement in the international trading system. I am not sure what you specifically had in mind beyond that.

Mr LAURIE FERGUSON—The committee has had allegations that, five years after the mechanisms were laid down, $3½ million worth of fines for illegal fishing in New South Wales is still not collected from Japanese. Are you aware of that? If $3½ million is not the right figure, are there any outstanding fees of any moment?

Ms Harwood—This relates to the Kotobuki vessels and their outstanding fines as a result of court action in Australia. I might ask Geoff Rohan to outline what the score is there.

Mr Rohan—The outstanding fines apply to those vessels. I am not aware of them applying to other vessels. In this instance, the vessels were not brought to port. The case was heard in the absence of those vessels on the basis of evidence available and the conviction was accompanied by the effective forfeiture of catch and vessels.

The owners of those boats have still not paid, and we have little in our power to compel them to pay. It has been pursued through negotiations at industry and government levels with the Japanese. We have taken what action we do have available to us, such as through the Forum Fisheries Agency, of which Australia is a member. Vessels are not permitted to fish in that region unless they are on the register, and it is by agreement that those vessels are being removed from the register. So they are excluded from fishing, not just in Australian waters but in the wider Pacific tuna region. However, we have been unsuccessful to date in securing the fines.

Mr TONY SMITH—Is there no power of arrest if they came into Australian waters?

Mr Rohan—If they came back into Australian waters it would be a different matter, but they have not.

Mr TONY SMITH—Secondly, what about the company that is running the vessels? If there is a common corporate link there, would there not be power to seize a vessel fishing under that corporate flag?

Mr Rohan—Offhand, I could not answer that. It is a matter of where the offence lies against. We can take action against only the company involved and probably in relation to that licensed fishing activity. I can give you only a general answer on that at the moment. I would have to investigate further before going into particulars.

CHAIR—How about you take that one on notice?

Mr Gleeson—There are three Kotobuki boats—28, 38 and 58—whichever operated in the Australian fishing zone. Following the prosecution and removal of 28 and 38 from the FFA register, none of the three boats has been back to Australia. Neither the company nor any of its vessels have ever returned to Australia.

Mr ADAMS—How would we know? They could bring it back and put another number on it.

Mr Gleeson—Yes, they could rename it. But we have some confidence in that we actually saw two of the boats outside the Australian fishing zone last year. Twenty-eight and 38 are still operating.

Mr LAURIE FERGUSON—On another subject: the Game Fishing Association and also, to some degree, the Australian National Audit Office expressed some concern about the composition of the MACs. To quote the Game Fishing Association in particular in evidence:

> Our particular MAC, the southern MAC, is made up of five, I think, industry members—a state government member, an AFMA member and a recreation person. I am not classified as a member. I am there as a permanent observer, which means basically that they do not have to accept my input.

As I say, the ANAO and that individual, on behalf of the Game Fishing Association, have a degree of concern about the dominance by industry representatives in regards to surveillance and monitoring, et cetera. Do you have any response to that?

Mr Meere—I might take this question. Two years ago AFMA started to diversify the composition of MACs. They have moved away from having core industry membership and include both recreational and charter boat interests and environment/conservation interests. Under the Fisheries Administration Act, which is the statutory basis for the composition of MACs, there is a maximum of nine members able to be appointed to a MAC. This means it is not always possible to have all the interests that you might want on a MAC as full members.

As a compromise and in order to expand membership and get those different views in the process of providing advice to the AFMA board, we have moved to a point where we have both members and 'permanent observers'. I am not aware of people being treated differently. They may feel slightly different because of the name, but the point is that they are around the table and they are corporate members of the MAC.

Importantly also, the Fisheries Administration Act requires that AFMA, in appointing members to MACs, includes an appropriate number of members involved in the fishing activity for a MAC. So, while there may be claims that there are not sufficient other interests there, the legislation is silent. It talks about including other groups, but it is silent on numbers and what might be appropriate in that regard. So in relation to the tuna MACs, in both the western tuna MAC and the eastern MAC we have recreational fishing members. In the eastern tuna MAC we also have a charter boat observer and an environment conservation observer. In relation to southern tuna MAC we have an observer, which is the reference that you made.

We have also diversified to include a conservation member when the reappointments came up, and we are in the process of appointing a conservation member to southern tuna MAC. That is at the expense of an industry member, so industry membership has gone from five to four and an environment conservation member has been appointed.

CHAIR—Has any thought been given to legislative amendment to cater more specifically?

Mr Meere—I guess we would want firm evidence that we are not accommodating those interests and we have moved to accommodate those interests.

CHAIR—We have certainly had evidence both in Western Australia and South Australia, and I think in the submission from Queensland there was some indication that this needed to be looked at.

Mr Meere—I need to make an important point in relation to composition of the MACs. The composition of the MACs under the legislation is almost a mirror image of the composition of the board in so far as it is based on trying to bring together relevant expertise. It is not a representational thing. Many of the submissions I have seen, both to the ANAO review and the House of Representatives review on Commonwealth fisheries management, indicate to me that the recreational fishing sector, by and large, does not comprehend the idea of a corporate approach to expertise and pooling the expertise available in providing advice to the AFMA board on fisheries management.

It is important that the board recognised, before the push to have other members included, that there was a need to diversify and to bring other client groups into the process so that we were properly picking up other community views on what needed to be considered in managing fisheries. Quite clearly, with nine members available there are limited spots available for membership. There is a good reason why nine was put into the original legislation and, as you can imagine, if the numbers expand. It is then more difficult to get consensus and to deal with issues.

So it was felt that, when we looked at amendments to the act 12 months ago and made recommendations to the minister at that time, the balance was to keep it at nine. We looked at expanding it and weighed up the pros and cons, and we decided to keep it at that. We also decided not to move away from the legislation which talked about an independent chairman, an AFMA member and seven other members as the board considered appropriate to get the mix of skills necessary on the MAC.

CHAIR—Perhaps one avenue is for this committee to reinforce perceptions that there is not a first and second 11 and that the observers have equal status.

Mr Meere—Certainly. I will give you some idea of the lengths we have gone to

make that very clear. We have a very important code of conduct or members responsibility requirement of all MAC members. When we have gone to observers, we have asked them to sign on in exactly the same way as a MAC member would sign on. Interestingly enough, almost all of them have been happy to do that, recognising their role as a corporate member of that MAC.

CHAIR—So your assessment is that it is not a major problem.

Mr Meere—I think it is one of perception. Certainly it is one that the board is very conscious of and it is one that we are moving to try to further address as we reshape MACs.

CHAIR—But it is something that we could reinforce in terms of the report.

Mr LAURIE FERGUSON—I think this is a very big issue. The fact is that two years later a person who is a significant player, as far as I judged him in Adelaide, feels that he has no voice in the process. There is still direct corporate representation and, by the nature of other representation, their belief in the importance of that industry. In turn, the perception I gained from Port Lincoln was that the 'industry' representatives were extremely pleased with the total connection of Japan and the treaty. I think the representation of other forces is a matter of debate.

CHAIR—Laurie was not in Western Australia, but I think it would be fair to say—Wilson you were there, so were Kerry and Tony—that there was a similar view in Western Australia. There were strong perceptions that there was a first and second 11.

Mr Meere—It is an interesting observation. I make the point that these are members, not representatives. And I need to emphasise that, in exactly the same way as the AFMA board is an expertise based board. In relation to the most recent of the tuna MACs that we established, Western Tuna MAC, there are members who are, let me say, all first 11: there is an environmental conservation member, a recreational fishing member and, in fact, industry membership is only three, from my memory.

It is not something you can do overnight because in doing that you may disenfranchise your other players. We are trying to walk a line which makes sure that we are bringing these people in and including them. If that is a problem we need to address, then we need to address it and try and agree to work with that. To my knowledge—and I have not been at those MAC meetings, so I cannot comment on that—we have certainly sought to include our permanent observers in the same way as MAC members.

CHAIR—Okay, I think that is something for the committee. The committee has to deliberate on that one anyhow. Thank you, Laurie.

Mr TUCKEY—We will have to refer it to another committee, Mr Chairman, but

it is not really an issue for the treaty.

CHAIR—That is right. There is a broader committee looking at this whole issue. Any more in terms of Laurie's section? Technical developments: I think we have covered most of it.

Mr BARTLETT—Yes, we have covered a fair amount of it. Just one or two more questions. The DPIE submission argues that the treaty gives us the capacity to get very accurate and up-to-date information on developments in Japanese fishing technology, yet we have been told on the other hand that their methods are in fact very traditional and that we are leading the way in areas such as fish farming and bait throwing and so on. Perhaps you might like to just expand for us on the areas where you think they can teach us a lot and how significant you see those benefits as being.

Ms Harwood—Yes, I think it is something that has evolved through time in terms of the transfer of techniques and perhaps finding the fish is a very important aspect of the current access arrangements, but Martin might like to give specific comments on what currently is of value to our industry in having the Japanese presence in the zone.

Mr Exel—Mainly, I suppose, in terms of technological developments, the Australians are incredibly innovative and are well ahead in terms of fishing for fresh chilled tuna closer to shore. If there is a difference it is in the ability to actually locate the fish. The Japanese network of not just having fished there for so many years but also their sea surface temperature and actual ability to find fish is probably the only significant, if you like, difference nowadays between Japanese and Australians.

Mr BARTLETT—And you see that still as significant enough benefit to outweigh any disadvantages to our industry of having them competing with us in our waters?

Mr Exel—It depends what you are talking about in terms of competing, I suppose. The vast majority of the fishing that the Japanese are doing is for the yellowfin and bigeye and you are talking about a million tonnes being taken over the line outside 200 miles, and the Japanese and Australians taking 8,000 or 9,000 tonnes in our zone. So the competition is not great.

Mr BARTLETT—In the area of fish farming, what do you see as the potential of that to significantly reduce the amount of long-line fishing occurring? Do you think that is likely to happen over the next decade or so?

Mr Exel—The long-fishing is basically Japanese. It would mean that the Japanese would have to set up fish farms themselves. I could not answer that other than to say that they tend to have a security of access and security of catch that they strive for. I cannot imagine them eliminating their long-line fleet to replace it in the near future anyway. Certainly from an Australian point of view, it is very positive.

CHAIR—Okay, we are moving on a bit in terms of time. Anybody else have any questions on technical developments? On joint ventures, there is just one specific one that I would like to raise and it comes back to some evidence that Mr Caton gave. The note I have got here is on page 17 of the transcript: you referred to the recent cessation of the joint venture long-line agreement. A number of questions: why has there been a move away from this type of operation? Are there likely to be any joint ventures in the foreseeable future? If the agreement was not renewed, would there be a move back towards this arrangement? Would you like to comment?

Mr Caton—I do not know that I really can go into much of that. As far as I am aware, the reason was commercially based. The joint venture arrangement is between the Japanese and Australian industries and not an executive decision. It was the industry arrangement.

Mr TUCKEY—Was it not an outcome of the boycott?

CHAIR—I thought it was.

Mr Caton—I do not have the background.

CHAIR—That is what we were told.

Mr Exel—The joint venture is an industry to industry agreement and basically has been used in the past and, to our understanding, was used in this situation as a lever by the Japanese industry over the Australian industry to create difficulties and therefore engender support for an increase in quota. The boycott related to the port access and whether they tied that in together as well. I am not aware as it was an industry to industry agreement.

Mr TUCKEY—But it happened at the same time.

Mr ADAMS—The Japanese are not known to go into joint ventures. If they can get away without going into joint ventures or sharing technology, they do so wherever they trade. You are telling me it was the other way around. That is hard for me to believe.

Mr Exel—I may have been unclear in terms of my response. Basically, the Australian input to the joint venture is provision of quota. So the Japanese cannot fish southern bluefin tuna in our zone other than the restrictions, that are 400 tonnes and 200 tonnes, unless they lease quota from the Australians. That is the benefit for them.

CHAIR—Moving on to transhipping—

Senator ELLISON—Firstly, do you think that the Japanese would be interested in transhipping in Australia?

Mr Rohan—I can tell you what they can or cannot do. Mary Harwood may best be the person to indicate the extent to which that has come up as an issue from negotiations.

CHAIR—Specifically in Tasmania there were some comments about that but related to freezer space. Western Australia had a particular view on this one. They felt that there was a lot in it.

Ms Harwood—The product they have on board is super low temperature frozen at minus 60. Transhipment, if product is going through to the sashimi market, obviously needs to maintain the fish in that condition. They have not expressed an interest on the Japanese side in off-loading the sashimi super frozen fish, for instance, to transmit it by some other means to Japan. There is nothing stopping them from doing that. If they wished to bring reefer boats in and to tranship across to those and send the catch out that way, that is quite feasible and licensible under the current arrangements.

Another issue is whether the Japanese catch could usefully be transhipped in Australian ports, say, to Australian processors to the mutual benefit of both sides. Again, that is quite feasible and has been provided for where there was a specific interest in Ray's bream. There is no express prohibition on transhipment, other than transhipment at sea, which is not permitted for obvious compliance and enforcement reasons.

CHAIR—Monitoring.

Ms Harwood—From my reading of some of the submissions there may be some misunderstandings that transhipment is not allowed. It is just whether people wish to do it and whether it is of commercial benefit to the transhipper and the transhippee.

CHAIR—There is the capital cost of picking up the infrastructure to do it anyhow, particularly if it is static infrastructure like in Hobart. They said in Hobart that they had a very large measure of unused space.

Ms Harwood—But if they have, for instance, storage to minus 20, that is of no interest to the Japanese.

CHAIR—I understood them to say it was minus 60, but I could be wrong.

Senator ELLISON—What impact do you see flowing from transhipping if it took place? I would ask you to look at, in particular, the impact on the ports, environmentally, and the fishing industry.

Ms Harwood—It depends for what purpose the transhipment was taking place. If it were for Japanese carrier boats to come in and just receive the fish to go back to Japan in those boats rather than the Japanese boats, there would be increased port activity if that

were the chosen activity, but I am not aware of any particular environmental impacts that would arise from that.

Mr Exel—The only negative, I suspect, was the one raised with Ray's bream where, if Japanese vessels are unloading product onto the Australian domestic market, it can create a replacement product, if you like, for other fish species and lower the price for Australian fishermen. That is really the issue with Ray's bream that was raised very strongly by a number of Tasmanian operators.

Mr Rohan—The distinction being made here is that Japanese caught tuna is being transhipped and finding its way back to Japan either on the same catching vessel or on a different vessel. I think the point being made is that, provided transhipment does not take place at sea, it is feasible and, I guess, there is no legislative reason why it cannot occur.

The issue of Japanese caught catch, or any foreign catch, being landed and sold in Australia directly from the vessels crosses a different threshold in terms of the Customs (Prohibited Imports) Regulations and would require specific approval by the Minister for Resources and Energy. The distinction there is catch going back to Japan versus catch coming into Australia for internal consumption.

CHAIR—We now go to recreational fishing.

Mr TRUSS—Obviously, there are a lot of recreational fishermen who are very interested in this issue. There was some evidence put to the committee that AFMA considers it has no power to manage tuna and marlin resources in a way which takes into account the interests and needs of recreational and game fishermen. Is that evidence correct? Is that your understanding?

Mr Meere—I think what is being raised here is a question of jurisdiction. There are different regimes existing on who has responsibility for tuna and tuna-like species. There are also agreements as to who manages that in terms of recreational management. Under the Fisheries Management Act, recreational fishing can be managed under a plan of management. There is scope for us to do that, but we would have to do that with agreement with the states in terms of the species where we were managing to—were we managing to low water mark or were we managing to three nautical miles, and so on.

So there may be some confusion about what our powers are. At present, we do not have—nor has it been given to us—the agreement with states, except I think with Queensland, that they would look favourably on AFMA and the Commonwealth managing recreational tuna and tuna-like species for recreational purposes across the Australian fishing zone.

Mr TRUSS—But do you take their interests into account in your management decisions?

Mr Meere—Certainly, and that is why we have members on all our management advisory committees to provide that input into the decision making process. As I mentioned earlier, on all of them, there are varying degrees of membership or permanent observers and their input is sought and considered in that process.

Mr TRUSS—Do you regard recreational fishing and game fishing as an industry of considerable worth whose resource has to be taken into account?

Mr Exel—Yes, it certainly is a major industry and yes, it is taken into account. The restrictions, for example, off Western Australia, are almost entirely due to recreational and, in fact, more game fishing, I think. When you start talking recreational, everyone thinks of Jimmy Jones off the wharf; really it is a large fraternity of expensive boats. Similarly, restrictions in terms of the north-east coast of Australia have been implemented on Japanese fleets directly in relation to game fishing charter boat operators. I think the balance is that game fishermen would like to see no Japanese in the zone whatsoever and then they would be much happier. I think it really comes down to how you balance up commercial activity and the benefits that it accrues to Australian industry, ports, et cetera.

Mr TRUSS—You referred earlier to the jurisdictional difficulties between state and Commonwealth: is that having a material effect on the management processes, in your capacity to make decisions?

Mr Meere—I guess I could cite the example where, even for commercial operations, we do not have jurisdiction for tuna into the coast of New South Wales, and so we rely on New South Wales Fisheries to provide complementary management arrangements to what we do in Commonwealth waters there. So, yes, it can cause an impediment. Jurisdiction in fisheries is a major issue and something which certainly does not lead, in many cases, to good and efficient fisheries management.

CHAIR—It would be fair to say as well—and we heard it in both Western Australia and in South Australia, and I suppose it comes back to representation and observer status on MACs, et cetera—that the evidence that we heard both in Perth and in Adelaide reflected a view, rightly or wrongly, that they felt they were the most aggrieved of anybody in this whole process.

As to whether that is a question of perception—as we have already discussed—or whether that is a question of fact, we are going to have to weigh up the evidence. We do not want to get into wider areas on the southern bluefin tuna. But, for example, in Western Australia, as I recall, the recreational fishing representative there felt he had more statistical data, seemingly, than the state fisheries department or the state primary industries, et cetera, had.

Mr Exel—Certainly, I would believe that would be the case because, in fact, we provide him with all of his data. And, in fact, the linkage is—

Mr TONY SMITH—I would not agree with that, but anyway.

Mr Exel—On the Japanese fleets, he follows it very closely. He actually maps out and has a computer program of where the boats have moved and things like that, whereas the state government tends to leave that side of it very much more to AFMA, which makes sense.

Mr TRUSS—I have heard it put in other ways: that there is a very valuable game fishing industry that kills only a handful of fish a year and they divide that by X millions, and so each fish is worth a million dollars or something or other.

Mr Exel—Yes.

Mr TRUSS—Which cannot be said about the Japanese operations, obviously.

Mr Meere—I might make a comment on that. What we are dealing with with fish is a renewable natural resource. And there is no reason—and I am not saying in relation to SBT because, obviously, we are in a low fish stock situation there—if properly managed, that the resource cannot be available, whether tagged or whether taken for the benefit of consumption, as a flow of benefits into the future.

The other point that I think is important is that the view that you get—and it is human nature—from your contact with recreational fishing groups is a very skewed view. I think you have probably got a skewed view from industry also in some things. It is a question of finding a balance in all this, and this is partly what we try to grapple with on a daily basis: how do we balance these often quite conflicting views in terms of where we make decisions and who they are going to affect?

Mr TONY SMITH—If I might say so, with respect, you ought to take into account, in balancing, the fact that the commercial interests have got a far greater interest than recreational fishermen because there is no commercial interest, or little commercial interest involved there; it is more a sport.

CHAIR—That is the point they make, but we do not want to get too far off the track with southern bluefin tuna tonight. Warren, do you have anything more on recreation?

Mr TRUSS—I think we have sort of skirted around the issues.

Mr TUCKEY—Well, it is primarily a by-catch issue from our point.

CHAIR—Yes, it is.

Mr TUCKEY—But, as I keep saying, there are issues in the Australian fishing industry which happens to be addressed by another committee of this parliament.

CHAIR—Yes, that is correct.

Mr TUCKEY—There is just no defined line.

CHAIR—I think, unless my colleagues have any more questions—

Mr ADAMS—I have one. If there are fewer fish out there for the recreational fishermen there will be fewer for everybody else, so it comes back to sustainability. I just wanted to make the point that in relation to the quota, we had evidence in Tasmania from one of the struggling fishermen there that when the joint ventures went through his costs of leasing quota was considerably less; it went down considerably. So it gave him an opportunity to get into the industry. Do you know of that, or would you like to make a comment on that?

Mr Exel—Basically, quota prices are determined by industry. They will change and fluctuate depending on market forces at the time.

Mr Meere—If there is a high demand, obviously the price will rise. If there is a glut in the market, as there was when joint ventures left the market, then obviously, yes, quota is more affordable.

CHAIR—I think we have finished southern bluefin tuna. What I would like to go on to—and I would like to wrap it up in 10 minutes because we all need to get home; I am sorry it has taken so long—is to quickly explore this Indian Ocean Tuna Commission. Mary, do you want to make a quick statement on that? Does anybody want to make a statement?

Let me just make a comment first. I think it would be fair to say that the departments were aware of this committee's interest, particularly in relation to this bilateral agreement, yet what we were faced with was this being tabled on Tuesday. The secretary of this committee got copies, I think, last Thursday. Of course, none of us were here in Canberra, and Monday was a public holiday. So it does make life very difficult. I just wonder why it was not done a little better. Does that give you enough to open the batting?

Ms Harwood—It does. Firstly, let me apologise for that fact and for that difficulty created by the tight timing in the tabling of this agreement. Perhaps I could just give a very quick look at why this is happening now and why we consider there is a pressing case for Australia to join this agreement.

This is a new regime which is to provide for conservation and management of tunas throughout the Indian Ocean. There is a clear overlap of interest in relation to southern bluefin tuna, in that both this regime and the Convention for the Conservation of Southern Bluefin Tuna are capable of providing management measures for that stock. This

agreement was created and concluded in 1993, but in recent times there has been a number of accessions to it which have meant that it has entered into force. Also, the first meeting of this commission has been scheduled for December.

From Australia's point of view, there are very powerful arguments as to why we should seek to be a member of the commission in time for that first meeting in December. That is why there is some urgency to the current process. One of these is to protect our interests, essentially, in southern bluefin tuna and to ensure that, from our point of view, the Indian Ocean Tuna Commission regime respects the prior existence and competence of the Bluefin Tuna Commission and respects the management measures that commission makes. I can go into more detail on that subject if people wish.

At the start-up of these commissions, decisions will be taken on matters such as the way in which the costs of participating in these commissions will be attributed amongst the members. If you are not there at the start, you do not get to vote on how that formula is carved up amongst the states who are party to the agreement. It also sets the scene for how it will pursue its business in terms of management of tunas in the Indian Ocean. The stocks that this commission covers are fished by a number of Australian fisheries, including the tuna long-line and billfish fisheries off the west coast of Australia as well as the more broadly distributed southern bluefin tuna.

That is just a brief overview of why there is an urgency to our acceding to this agreement in time for us to be a full speaking member at the first meeting in December. Again, I do apologise for the way in which that timing has affected the work of this committee.

CHAIR—Thank you. Can I just ask in relation to page 2 of the NIA, which states:

> Membership of IOTC will mean that Australia will have a voice in the Commission and a real opportunity to influence the conservation and management decisions taken in the Commission that impact on Australia's national and international fisheries interests.

Given that a two-thirds majority of the commission members would decide conservation and management decisions, if Korea, Indonesia, Japan and China join that commission, will Australia have sufficient allies to retain its influence over the total allowable catch levels of southern bluefin tuna?

Ms Harwood—I think that is a difficult issue to give a 'yes' or 'no' answer to—

CHAIR—Would you like to take that one on notice?

Ms Harwood—Yes. It would also depend on the day, in terms of who is a party at the time that decisions of that sort are made, what the regional politics are and how effective we would be in lobbying for our interests.

CHAIR—If we could have a comment from you on that.

Ms Harwood—Yes.

Mr McCLELLAND—I must say that I have not looked at the public interest analysis in great detail. But on that last point, even if you ultimately lost in terms of the numbers game, do you nonetheless believe it is in Australia's interest to be a party to that process?

Ms Harwood—Very much so. If you are not part of it, you cannot influence it.

Mr TUCKEY—I do not have much to ask on this one, other than I tend to agree that we probably have to be in it. I am concerned as to who the participants are going to be, other than there is some suggestion that they might people who are not currently in the present arrangement.

Ms Harwood—It is open to a wide range of countries. It includes all the Indian Ocean rim states as well as countries that fish in the Indian Ocean. At the moment, the current membership is a balance of fishing states and coastal states.

Mr TONY SMITH—Is it more about getting some sort of overall global strategy in relation to the resource; is that really what it is?

Ms Harwood—Both under the law of the sea and under the new United Nations agreement, the means by which effective conservation of highly migratory stocks is to be pursued is through regional fishing regimes of this sort. This is how countries get together and manage those stocks. The Indian Ocean has not had one to date. This is it, and it entered into force this year.

Mr TONY SMITH—What is the evidence in the Indian Ocean; is it a highly fished area?

Ms Harwood—It has very substantial industrial tuna fisheries. Obviously, in the case of southern bluefin tuna, there is already a stock depletion problem. For the other fisheries, the information is uncertain, but we can assume that they will be reaching capacity at some time soon for tropical tuna such as yellowfin and skipjack. So there are management issues on a broad scale. As well as that, there are more localised tuna fishery management issues around the region.

CHAIR—What about the impact around Cocos and Christmas islands; what is the potential impact in terms of stocks?

Ms Harwood—In terms of expanding long-line fisheries out of Indonesia or just tropical tuna long-lining generally, yes, there are obvious impacts where there is expansion

of fleets. It is through bodies such as this that we would seek to influence the levels of exploitation on stocks of concern to us. That is the mechanism by which we would seek to influence what happens on the high seas outside the zone off Cocos Keeling or off Western Australia.

CHAIR—Is the assessment that there is fairly good potential in that area?

Mr Exel—There is good potential for Indonesian long-lining activities. But I think the majority of tuna fishing in the Indian Ocean tends to be very heavy industrial purse seine fishing and there is probably a lot less potential there. The real concern, from our point of view, with the Cocos and Christmas islands, is obviously the proximity to the southern bluefin tuna spawning grounds—so any potential increase there is a concern to us.

Mr TUCKEY—On that point, it really does bring us full circle to my argument that we seem to spend a lot of time trying to control people catching fish when it is time we started to try to control them eating fish. When you start to widen your scope to areas as big as the Indian Ocean, I think that should be very high on our agenda.

CHAIR—Can I thank all of you tonight. I am sorry it has gone on as late as it has but I think we now have enough. We have put you on notice to come back with one or two things. At this stage we will formally accept the A-G's letter of 10 October.

Resolved (on motion by Mr A. Smith):
That the A-G's letter of 10 October be received as evidence and authorised for publication.

Are there any final comments?

Ms Harwood—I have one brief one. Fishing and port access are very important levers in international fisheries management and in conceiving possible restructuring or new approaches to the way we pursue the bilateral agreement. The timing effects in both directions are important so we need to look at how we are able to use those elements as tools of influence in the way we manage regional fisheries.

CHAIR—Thank you very much. It has been very helpful. We now look forward to doing the hard slog and putting it all together. As I have said before, we are confident that Cheryl, who is the one who will do most of the drafting, will produce a good first draft that we can all come to grips with. We hope to formally table this in both houses on 4 November or shortly thereafter. If there is anything else, we undoubtedly will get in touch with you.

Resolved (on motion by Mr McClelland):

That this committee authorises publication of the proof transcript of the evidence given

before it at public hearing this day.

Committee adjourned at 10.08 p.m.