

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

AMENDMENTS TO THE BONN CONVENTION

9th Report

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EXTRACT FROM RESOLUTION OF APPOINTMENT

The Joint Standing Committee on Treaties was formed in the 38th Parliament on 30 May 1996. The Committee's Resolution of Appointment allows it to inquire into and report upon:

- (a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- (b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- (c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

RECOMMENDATIONS AND FINDING

Recommendations

The Joint Standing Committee on Treaties recommends that the Australian Government continues its efforts to optimise membership of international agreements such as the Bonn Convention, the Commission for the Conservation of Southern Bluefin Tuna, the Commission for the Conservation of Antarctic Marine Living Resources and the Convention on the International Trade in Endangered Species. (Paragraph 5.13 refers.)

The Joint Standing Committee on Treaties recommends that all Departments and agencies involved in managing Australia's membership of the Bonn Convention ensure that funds are used to harness the available expertise in the most effective way, including the new technology in such areas as bait setting. (Paragraph 5.15 refers.)

The Joint Standing Committee on Treaties recommends that the Australian Fisheries Management Authority examine all aspects of its observer program to establish the likely costs and benefits of placing appropriately trained observers on vessels within the Australian Fishing Zone and its Exclusive Economic Zone. (Paragraph 5.19 refers.)

The Joint Standing Committee on Treaties recommends that the Australian Fisheries Management Authority hold discussions with the tuna fishing industry with a view to arranging observed testing of such techniques as night setting of bait on the high seas. (Paragraph 5.23 refers.)

Finding

The Joint Standing Committee on Treaties notes the material it has received, and supports the proposed listings of one species of albatross and two species of cetaceans in Appendix I and ten species of albatross in Appendix II to the *Convention on the Conservation of Migratory Species of Wild Animals*. (Paragraph 5.25 refers.)

ABBREVIATIONS

AFMA	Australian Fisheries Management Authority
AFZ	Australian Fishing Zone
AMCS	Australian Marine Conservation Society
ANAO	Australian National Audit Office
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of Parties
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DEST	Department of the Environment, Sport and Territories
DPIE	Department of Primary Industries and Energy
EIS	Environmental Impact Statement
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Authority
ERS	Ecologically Related Species
FAO	Food and Agricultural Organisation
HSI	Humane Society International
IUCN	International Union for Conservation of Nature
NIA	National Interest Analysis
NGO	Non-Government Organisation
NSW	New South Wales
PRC	People's Republic of China

SBT	Southern Bluefin Tuna
SOSSA	Southern Oceans Seabird Study Association
TAP	Threat Abatement Plan
UN	United Nations
USA	United States of America
WA	Western Australia
WWF	World Wild Fund for Nature Australia

CHAPTER 1

BACKGROUND TO THE INQUIRY

The Convention

1.1 The *Convention on the Conservation of Migratory Species of Wild Animals* is also known as 'the Bonn Convention'. The latter, short title will be used in this Report. It was done at Bonn on 1 November 1979 and entered into force generally on 1 September 1983. Earlier amendments to Appendices I and II entered into force on 24 January 1986, 12 January 1989 and 18 July 1992.¹

1.2 Australia signed the Convention on 23 June 1979 and the instrument of accession, with a federal statement, was lodged with the depositary on 26 June 1991. It entered into force for this country on 1 September 1991.²

1.3 A total of 49 countries are States Parties to this Convention, with several others expressing interest in joining. Among other nations, Brazil, the United States of America, Japan and New Zealand are not Parties.³

1.4 The National Interest Analysis (NIA) setting out listings proposed by Australia to Appendix I (the addition of one species of albatross) and Appendix II (the addition of ten species of albatross) to this Convention was tabled in both Houses of the Parliament on 27 May 1997. A revised NIA, including details of two species of cetaceans proposed by Argentina and Chile for listing in Appendix II, was tabled in both Houses on 18 June 1997.⁴

1.5 Following the 5th meeting of the Conference of Parties (COP) to the Convention, the 90 day default period, under Article XI, for the entry into force of the listings in both Appendices, began on 17 April 1997 and ended on 15 July 1997. On 3 June 1997, the Minister for the Environment was advised that,

¹ Australian Treaty Series 1991, No 32; *Australian Treaty List, Multilateral*, (as at 31 December 1995), Department of Foreign Affairs and Trade, p. 408.

² *ibid.* Transcript, 23 June 1997, p. 4.

³ Transcript, 23 June 1997, pp. 11, 20.

⁴ Senate, *Hansard*, 27 May 1997, pp. 3456-3457, and 18 June 1997, p. 3975; House of Representatives, *Hansard*, 27 May 1997, p. 4110, and 18 June 1997, p. 5489. Transcript, 23 June 1997, p. 5.

as the listings were consistent with the conclusions and recommendations in our third report, *Two International Agreements on Tuna*, our support could be assumed for these measures.⁵

1.6 Selected organisations and individuals were approached to provide submissions on these listings, and submissions for the inquiry were sought through an advertisement in a national newspaper. Those submissions which were received are listed at Appendix 1.⁶

1.7 Public hearings were held on the listings in Canberra on 23 June 1997 and in Hobart on 4 August 1997. The people who gave evidence at the hearings are listed at Appendix 2. Exhibits received during the inquiry and incorporated into its papers are listed at Appendix 3.

Costs and implementation

1.8 Listing these species is not expected to impose additional costs on Australia to meet its obligations under this Convention. Strong protection and conservation management regimes are already in place for both albatrosses and cetaceans, and no additional arrangements are required.

1.9 Acts such as the *National Parks and Wildlife Conservation Act 1975* and the *Whale Protection Act 1980*, together with State/Territory legislation, would enable Australia to meet its obligations without amendment to that legislation. Australia is already taking action to conclude regional conservation agreements to benefit the albatross and to give priority to those species with an unfavourable conservation status. Parties are encouraged to conclude such international agreements under Article 4 of the Bonn Convention.⁷

Consultation about the listings

1.10 The NIA covering these listings referred to 'extensive consultation' with the fishing industry, non-government organisations (NGOs) and State/Territory Governments.

⁵ This report, which was tabled in November 1996, will hereafter be called 'third report'.

⁶ An advertisement, seeking submissions and comments on the amendments to both the Bonn Convention and CITES, was published in *The Weekend Australian*, 21/22 June 1997, p. 25.

⁷ For these regional agreements, see paragraphs 4.38 and 4.39 below.

1.11 In particular, the NIA stated that views were sought from 'representative fishing industry groups' through the Australian Fisheries Management Authority (AFMA). The industry supports these listings, their resource implications had been discussed and are being addressed as part of the development of an oceanic long-line fishing threat abatement plan (TAP).⁸

1.12 Because the industry was not consulted in advance about the proposal to list the two species of cetaceans, AFMA sought comments. The Acting Director of Fisheries, South Australian Department of Primary Industries, commented that, as all cetaceans were protected in Australian waters, the listing 'would seem to be academic from a protection viewpoint'. If there were to be a regional conservation agreement for cetaceans, it believed the listing might be beneficial and should be supported.⁹

1.13 Austral Fisheries saw no problems with the listings, but pointed out that the approved method of fishing in sub-Antarctic waters was trawling and that this did not pose a threat to either species. The firm's operations had not caused the deaths of any cetaceans and sightings were rare. Its only concern was that the Australian industry be fully consulted prior to any action being taken. It recognised that there was little information about the animals, but stated that it would be concerned if this lack of information was used to justify the imposition of 'unreasonable restrictions' on commercial fishing operations. It also supported the listings.¹⁰

1.14 Non-government conservation and environmental organisations 'strongly supported' the listings. Favourable responses were also received from relevant State/Territory Ministers.

Previous Parliamentary examinations

1.15 In December 1993, the Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure tabled a report titled *Fisheries Reviewed*. Although primarily a review of the adequacy of the Commonwealth's fisheries legislation, it also examined the functions and operations of AFMA. Many of its recommendations had implications for surveillance of, and compliance and enforcement in, the fishing industry. It

⁸ Transcript, 23 June 1997, pp. 12-13. For further information on the development of the TAP, see paragraphs 4.40 and 4.41 below.

⁹ Exhibit No 23.

¹⁰ Exhibit No 24. See paragraph 3.14 below for a comment on the potential threat posed to cetaceans in sub-Antarctic waters by trawling.

dealt with by-catch simply as fish caught for which a quota was not available, and did not refer to either albatrosses or cetaceans in this context.¹¹

1.16 The third report of the Joint Standing Committee on Treaties (JSCT) dealt with the issue of the seabird by-catch generally and albatrosses specifically, in the context of the 1996 Subsidiary Agreement with Japan concerning long-line fishing for Southern Bluefin Tuna (SBT). Many of the concerns in that report will be re-visited below, including such mitigation measures as the use of Tori poles, the TAP and the role of observers. It is a matter of concern that the Government's response has not yet been tabled.¹²

1.17 With reference to the seabird by-catch, we recommended that:

a specialist observer training program be introduced with additional emphasis on seabird research, the collection of data on seabird bycatch and the effectiveness of seabird bycatch methods;

the Commonwealth Government produces an "easy to use guide" to the identification of seabirds which is to be issued to Japanese vessels including Joint Venture vessels at the time of the pre-fishing inspection;

the Commonwealth Government expedites research into eliminating bird bycatch as a matter of priority, and

the Commonwealth Government formally invites representatives from Japan and New Zealand to participate in the development of the Threat Abatement Plan.¹³

1.18 Consideration of the 1997 Subsidiary Agreement with Japan was included in our *Eighth Report*, tabled in June 1997. It also commented on the absence of a Government response to the third report and encouraged implementation of our recommendations, together with bilateral and multilateral work 'in all forums to **eliminate** the problem of by-catch connected with long-line fishing'. While signing the 1997 Agreement was supported, special attention will be paid to the 1998 Subsidiary Agreement to assess the

¹¹ Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure: *Fisheries Reviewed*, December 1993, pp. ix, 48-49. This was preceded in the early-1980s by reports from two now defunct Senate Committees.

¹² See Joint Standing Committee on Treaties: *Two International Agreements on Tuna: 3rd Report*, November 1996, pp. 98-112 (*passim*). Tori poles are poles with a long line travelling into the water with streamers attached which deter birds from taking bait; cf. *ibid*, p. 104. The *Fisheries Management Act 1991* provides for regulations to be made prescribing matters required or permitted under that Act, so that the construction and mounting of Tori poles are prescribed. See Submissions, p. 36.

¹³ Recommendations 18 to 21, *ibid*, pp. 103, 109 and 110 respectively.

extent to which the recommendations of the third report have been incorporated in the process of negotiating these annual agreements with Japan.¹⁴

1.19 As a result of the referral of an audit report by the Australian National Audit Office (ANAO), in June 1997, the House of Representatives Standing Committee on Primary Industries, Resources and Rural and Regional Affairs tabled *Managing Commonwealth Fisheries: The Last Frontier*. Referring to the ANAO's report, it said that there had been 33 reviews of various aspects of Commonwealth fisheries management between November 1982 and July 1995. It also made the point that:

Fisheries resources are difficult to understand and extremely challenging to manage.¹⁵

1.20 It pointed out that by-catch was a serious environmental problem in fisheries and an important consideration in the sustainability of commercial fishing. It referred to evidence, given by the Department of Primary Industries and Energy (DPIE) and AFMA that by-catch had important implications for fishing and that there were increasing demands to reduce it by focussing on methods such as long-lining and trawling.¹⁶

1.21 Evidence was also given that:

- the by-catch of seabirds, notably albatross, during long-line tuna operations had led to action under the *Endangered Species Protection Act 1992* to list species of the bird as vulnerable, and
- pelagic tuna long-lining had been listed as a 'key threatening process' for albatross.¹⁷

1.22 AFMA's evidence to the inquiry highlighted by-catch as one of 'the most pressing issues' in fisheries management. In response to these concerns, AFMA was coordinating development of 'a Commonwealth fisheries by-catch policy'. A TAP was also being developed with relevant stakeholders.¹⁸

¹⁴ Joint Standing Committee on Treaties, *Eighth Report*, June 1997, pp. 10, 11-12. The emphasis was in the original text.

¹⁵ House of Representatives Standing Committee on Primary Industries, Resources and Rural and Regional Affairs, *Managing Commonwealth Fisheries: The Last Frontier*, June 1997, pp. 1, 5.

¹⁶ *ibid*, pp. 69, 70.

¹⁷ *ibid*, p.70. See paragraphs 4.9 and 4.10 below for further information on the listing of albatross species under the *Endangered Species Protection Act 1992*.

¹⁸ *ibid*. See paragraphs 4.40 and 4.41 below for information on the development of the TAP for albatrosses.

1.23 Without referring to particular species, the Committee recommended that AFMA trial the use of cluster quotas in a fishery to support efforts to overcome by-catch problems. A cluster quota could be applied to a group of species which were essentially by-catch, and this provided some upper limit on the landing of species which were not actually targeted by commercial fisheries.¹⁹

1.24 To date, the Government has not responded to this report of the House of Representatives' Committee.

Report structure

1.25 The contents of the Convention are analysed briefly in Chapter 2. The proposed listings of the two species of cetaceans are set out in Chapter 3, while those of the 11 species of albatross are discussed in Chapter 4. In Chapter 5, we comment on some of the material presented to the inquiry and make some recommendations and suggestions which may assist Australia to implement its undertakings under this Convention.

¹⁹ *ibid*, Recommendation (17), p. 72.

CHAPTER 2

PROVISIONS OF THE CONVENTION

2.1 Parties to the Bonn Convention recognise that wild animals are an irreplaceable part of the earth's natural system which must be conserved for the good of the human race. They acknowledge the importance of the conservation of migratory species, which are defined as 'the entire population or any geographically separate part of the population of any species'. Parties agree to take action to this end, paying special attention to species which have an unfavourable conservation status and taking individual or collective action as appropriate to conserve species and their habitat.¹

2.2 In particular, Parties should promote, cooperate in and undertake research relating to migratory species. The Convention acknowledges the need for Parties to take action to avoid any migratory species becoming endangered.

2.3 An endangered species means a migratory species which is in danger of extinction 'throughout all or a significant portion' of its range, which is all the areas of land and water a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route. Terms such as these are defined in Article I.

2.4 A range state is considered to be a state that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route. Articles III and IV of the Convention detail the responsibilities of range states in relation to listing of species under Appendices I and II. These Articles set out conditions for listing and removal of a listing, and encourage Parties to conclude agreements which would benefit the listed species. It is only those Parties who are range states and have species listed in the Appendices which have particular obligations.

2.5 Under Article III, listing in Appendix I obliges range states to endeavour to take action to encourage the recovery of species and manage threats to them. While it obliges range states to prohibit the taking of listed species, exceptions may be made to this prohibition only for scientific purposes, to enhance propagation or survival, to accommodate the needs of traditional subsistence users of the species, or where extraordinary circumstances apply.

¹ Convention, Preamble, Articles I and II.

2.6 Under Article IV, listing in Appendix II does not oblige range states to prohibit the taking of species, which may be listed in both Appendices. Parties shall endeavour to make agreements where these would benefit migratory animals, and should give priority to those species with an unfavourable conservation status. They are encouraged to conclude these agreements for any population or part of a population of any species which periodically cross national boundaries. Agreements do not have to be with other Parties to the Convention and, in Article V, extensive guidelines are set out for such agreements.

2.7 Article VI obliges Parties to inform the Secretariat of the species listed in the Appendices to which they consider themselves to be range states. Parties should also provide information on flag vessels outside national jurisdictions which are engaged in taking such species.

2.8 The Convention includes an operational framework which includes:

- a Conference of the Parties (COP), the decision making body of the Convention (Article VII);
- a Scientific Council, which provides the COP with scientific advice, recommendations on research, proposed inclusions in the Appendices, specific conservation and management measures and potential solutions to scientific problems (Article VIII), and
- a Secretariat to provide administrative support (Article IX).

2.9 Articles X and XI deal with amendments to the Convention and the Appendices. The Convention may be amended by a COP and amendments to the Appendices can be adopted by a COP. Amendments to the Appendices enter into force for all Parties by default 90 days after the COP at which they were adopted, except for those parties which make a reservation in accordance with paragraph 6 of Article XI.²

2.10 Article XII deals with the effect of the Convention on international conventions and other legislation, while Article XIII sets out the process for resolving disputes between two or more Parties.

2.11 Under Article XIV, the Convention is not subject to general reservations, but specific reservations may be made in accordance with this Article and with Article XI.

² The 90 day default period for all the species covered by the listings considered in this Report began on 17 April 1997 and ended on 15 July 1997.

2.12 Under Article XIX, a Party may denounce or withdraw from the Convention at any time by written notification to the depositary, the Government of the Federal Republic of Germany, with withdrawal taking effect twelve months after the application is received.

CHAPTER 3

PROPOSAL TO LIST CETACEANS

The listing of cetaceans

3.1 At the 5th meeting of the COP in April 1997, as the result of proposals made by Argentina and Chile respectively, it was agreed that two species of cetaceans be listed in Appendix II: the *Australophocoena dioptrica* (Spectacled Porpoise) and the *Lagenorhynchus obscurus* (Dusky Dolphin). Australia is a range state for both species.¹

3.2 Small cetaceans face increasing threats from degradation of their habitat and from both incidental and direct take. Increasing numbers are also being harvested commercially. The regulation of small cetacean populations remains outside the framework of the *International Convention on the Regulation of Whaling 1946*, which only covers the large baleen whales and sperm whales.²

3.3 The cetaceans which are the subject of these listings are highly migratory, cold temperate water species which live in pelagic habitats such as the cold sub-Antarctic waters, on the Continental shelf or off South America and South Africa. They are brought to Australian waters by cold currents and are uncommon: there have not been many sightings of either species. There were no indications of threats to the survival of either species in Australian waters, and no suggestion that their habitat was being degraded in our waters. There was no evidence of interaction with fisheries: no commercial take and no reported occurrences of either species as by-catch.³

3.4 The NIA pointed out that there was growing interest in fishing in remote regions where these species were found. There was concern that, because of the remoteness of these areas, it may be difficult to control fishing effectively. Thus, interactions with fishing and cetacean by-catch may not be reported.

3.5 These species are believed to travel considerable distances on a seasonal basis in their search for food. Too little is known about the diet, population size and habits of either species to assess the likely impact on them of these new fisheries. This lack of knowledge is perhaps the greatest threat to their survival.

¹ The full taxonomy for each species mentioned will not be used in this Report, and common names for individual species will be used hereafter, unless there is a reason to differentiate between species.

² Submissions, p. 37; Transcript, 23 June 1997, pp. 5, 17.

³ *ibid*, pp. 5, 13-14.

Management of new and existing fisheries in the sub-Antarctic and cold temperate waters of Australia's Exclusive Economic Zone (EEZ) will need to address likely threats posed to these species by fishing. According to the Department of the Environment, Sport and Territories (DEST), this Convention provides the most accessible mechanism to facilitate international action to conserve these species, and will complement measures already taken by Australia under the *Whale Protection Act 1980*.⁴

3.6 DEST stated it was hoping to establish a 'best practice' fishing management regime domestically, through the development of a TAP. Through the Convention, it was also hoping to develop a regional agreement in which Australia could take a leading role. This was consistent with statements in the NIA that conservation of migratory species must be addressed in the context of global populations and that, to be effective, it must also address threats at both the domestic and global levels.⁵

3.7 The Spectacled Porpoise may be the world's rarest species of cetacean. Early in 1997, two were stranded, one in Tasmania and the other in South Australia, confirming Australian waters are part of the geographical range of this species.⁶

3.8 The Dusky Dolphin has been reported in Australian waters 'infrequently but regularly', but little is known of its status, diet or movements in this region.⁷

Australia's Action Plan

3.9 Published by Wildlife Australia in September 1996, *The Action Plan for Australian Cetaceans* forms one of a series of action plans for Australian fauna. Its aim was to develop a national overview of the conservation status of Australian cetaceans and to recommend conservation priorities, and research and management action, with particular emphasis on endangered and vulnerable species.⁸

3.10 The Action Plan recommended that five species or sub-species be listed as endangered or vulnerable under the *Endangered Species Protection Act*

⁴ Submissions, p. 37; Transcript, 23 June 1997, p. 5.

⁵ Transcript, 23 June 1997, p. 12. Although the TAP was directed principally towards the conservation of albatrosses, it could also assist in the conservation of cetaceans. See paragraphs 4.40 and 4.41 below.

⁶ Submissions, p. 37; Transcript, 23 June 1997, pp. 5, 12-13, 24.

⁷ Submissions, p. 37.

⁸ Exhibit No 12, p. 1.

1992. Four species were classified as 'insufficiently known', while a further 22 species or sub-species had no category assigned because insufficient information was available about them. Only one sub-species was classified as 'secure'.⁹

3.11 Neither the Spectacled Porpoise nor the Dusky Dolphin was assigned categories under this Plan because insufficient information was available on them. The Action Plan referred to the listing of both species in Appendix II to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).¹⁰

Views of interested organisations

3.12 **WWF.** The World Wide Fund for Nature Australia (WWF) referred to the Action Plan, stating that the management requirements it outlined should be implemented. Past, current and potential threats have been identified for the species; conservation objectives and actions have been detailed. In addition to other threats, WWF mentioned the long term effects of persistent organic pollutants which build up in tissues and were the subject of research into the effects of endocrine disruptors on the successful breeding of cetaceans.¹¹

3.13 WWF recommended that Australia, in fulfilling its management responsibilities under the Action Plan and addressing the Government's National Oceans policy, should integrate research programs with New Zealand for species which move in the waters between the two countries. It should also cooperate with New Zealand and Argentina to adopt a research strategy which would provide the following information:

- distribution of these species in Australian waters;
- identification of all threats, including interaction with fisheries, plastic debris and pollutants, and
- determination of the diets and the level of toxins in the tissue of species which have been accidentally caught.¹²

⁹ *ibid*, p. iii.

¹⁰ *ibid*, pp. 52 and 62 respectively. The COP for this Convention also met in June 1997, and the listings agreed will be the subject of a later report.

¹¹ Submissions, pp. 32-33. See Exhibit No 12.

¹² Submissions, pp. 32-33.

3.14 **HSI.** The Humane Society International (HSI) referred to a comment by DEST that current practices are not likely to impact on the listing of the two small cetacean species. HSI stated that incidental captures and expanding fisheries in the Southern Ocean, especially in areas adjacent to sub-Antarctic islands, were nominated as a threat to the Spectacled Porpoise. In particular, it noted that while Australia's 'exploratory fishery' is using trawl nets to minimise the impact on albatrosses, use of this process in this area has been identified as a potential threat to that porpoise. The pelagic squid fishery was also seen as likely to impact on the recovery of this species.¹³

3.15 HSI referred to calls for Environmental Impact Statements (EIS) for the Heard, Macquarie and McDonald Islands fisheries, which had not yet been undertaken. Because these matters have implications for biodiversity generally in the sub-Antarctic region, for the fishing industry and for albatrosses as well as cetaceans, they will be considered when HSI's views on the listing of the species of albatross are set out in Chapter 4 below.¹⁴

3.16 **Tuna Boat Owners' Association of Australia.** The Association supported the listing of the two species of cetacean under the Bonn Convention. It noted that they were seldom seen in Australian waters, but that about 34 dolphins and sea lions had been caught in nets between 1991 and 1996. In the last twelve months, significant changes had been made to industry practices and since then there had not been any deaths.¹⁵

¹³ Submissions, p. 21; Transcript, 23 June 1997, pp. 5, 23-24.

¹⁴ Submissions, pp. 21, 20; Transcript, 23 June 1997, pp. 24, 36.

¹⁵ Submissions, pp. 49, 51; Transcript, 4 August 1997, pp. 53, 54.

CHAPTER 4

PROPOSAL TO LIST ALBATROSS SPECIES

The proposal to list albatross species

4.1 Australia is a range state for a number of albatross species. It presented its first National Report to the Parties to the Bonn Convention in 1991, when it raised concerns about the level of albatross mortality associated with long-line fishing. Following this, albatross species were recommended for priority consideration for addition to the Appendices to the Convention.

4.2 In November 1996, Senator the Hon Robert Hill, Minister for the Environment, announced that 11 species of albatross, seven of which are at risk of extinction, had been nominated for international conservation action. At the 5th meeting of the COP in April 1997, Australia successfully proposed that one species be listed in Appendix I and ten species in Appendix II of the Convention:¹

Appendix I

Diomedea amsterdamensis (Amsterdam Albatross).

Appendix II

Diomedea exulans (Wandering Albatross)

Diomedea epomophora (Royal Albatross)

Diomedea irrorata (Waved Albatross)

Diomedea melanophris (Campbell Island Black-browed Albatross)

Diomedea bulleri (Buller's Albatross)

Diomedea cauta (Shy Albatross)

Diomedea chlororhynchos (Indian Yellow-nosed Albatross)

Diomedea chrysostoma (Grey-headed Albatross)

¹ Minister for the Environment, Media Release 155/96, 11 November 1996.

Phoebetria fusca (Sooty Albatross)

Phoebetria palpebrata (Light-mantled Sooty Albatross).²

4.3 The Amsterdam Albatross is the world's rarest seabird species, with only 19 breeding pairs. It breeds on Crozet Island, a French territory in the Indian Ocean, and is threatened by destruction of its habitat, feral animals and human activity. While its foraging range has not been documented, at least one bird has been recorded as a casualty of long-line fishing in Tasmanian waters.³

4.4 All the species proposed for listing in Appendix II have populations of uncertain size and status.⁴

4.5 The albatrosses listed above constituted all of the Southern Hemisphere albatross species. In addition, the 5th COP accepted a proposal from the Netherlands to add two Northern Hemisphere species to Appendix II. Since another Northern Hemisphere species was added to Appendix I by the 4th COP, all the albatross species were now listed under this Convention.⁵

Conservation measures in train

4.6 On 3 March 1997, the Prime Minister announced the spending of \$106 million on the coasts and clean seas initiative to support the Australian Oceans Policy. He referred to the threat to albatrosses from by-catch, and to the deaths of 'many thousands' of the birds each year 'by fishing practices which can be modified'. The fishing industry was working with the Government to reduce this threat. He also referred to these listings under the Bonn Convention, and to regional conservation agreements to reduce threats and save albatrosses from becoming 'seriously endangered'.⁶

² Submissions, pp. 38-39. Exhibit No 7, pp. 18-19, was also used in preparing this list. At the 4th COP, a Northern Hemisphere species of albatross was included in Appendix I. At the 5th COP, a proposal from the Netherlands was accepted to add two Northern Hemisphere species to Appendix II. All 14 species of albatross are now listed in the appendices to the Convention; see Transcripts: 23 June 1997, p. 4; 4 August 1997, p. 39. All the migratory wild animals listed under Appendices I and II to the Convention are at Submissions, pp. 40-47.

³ Submissions, p. 24; Transcript, 23 June 1997, p. 17.

⁴ Transcript, 4 August 1997, p. 40.

⁵ Transcripts: 23 June 1997, p. 4; 4 August 1997, p. 39.

⁶ House of Representatives, *Hansard*, 3 March 1997, pp. 1494, 1495.

4.7 Thus, the Oceans Policy would cover issues such as the reduction of by-catch and promote growth in the value of Australia's fisheries, through improved fisheries management, monitoring, control and surveillance of remote areas of the EEZ and beyond. As part of the initiatives to support this Policy, \$440,000 would be spent on developing policies to reduce by-catch, including the development of action plans for each Commonwealth fishery. This sum included \$240,000 to assess the effect of fishing on non-target species. A further \$400,000 would be spent to develop improved management and surveillance arrangements for remote areas of the EEZ. This initiative would include a study on using satellite imaging to improve Australia's monitoring capacity.⁷

4.8 The 1997/98 Budget reflected concerns about the conservation status of albatrosses. One of its documents referred to the commitment of funds to the TAP, and to the commitment of funds to developing and implementing a recovery plan for the Macquarie Island population of Wandering Albatrosses. The Government also recognised that effective conservation would require efforts outside Australia's EEZ, hence the listings which it saw as providing for the global conservation of the birds. Funds will also be provided for Australia to take a leading role in this work.⁸

4.9 On 24 July 1995, *Diomedea exulans chionoptera* (the Macquarie Island Wandering Albatross) was declared an endangered species under the *Endangered Species Protection Act 1992*. This listing demanded preparation of a Recovery Plan, which provided for research and management actions necessary to stop the decline of and support the recovery of the species, so that its chances of long-term survival in nature were maximised. This plan was being drafted in consultation with AFMA, Tasmanian Government agencies, the fishing industry and interested NGOs.⁹

4.10 Four other species were being considered for listing under the Act:

- the Black-browed Albatross;
- the Shy Albatross;

⁷ *Australia's Oceans: New Horizons-A New Commonwealth Agenda*, DEST, 1997, pp. 4-5; DPIE Media Release 97/117P, pp. 1-2.

⁸ Exhibit No 9, p. 111.

⁹ Submissions, p. 35.

- the Sooty Albatross, and
- the Grey-headed Albatross.¹⁰

Some characteristics of albatrosses

4.11 As some noted Australian researchers in this field have pointed out, albatrosses are conspicuous across the oceans of the world. Although research indicated that there may be twice that number, 14 species are currently recognised. These birds can breed either as solitary pairs or in large colonies on remote islands in windy latitudes, from 30 to 50 degrees, in either hemisphere. Their capacity for efficient, gliding flight enables them to cover vast tracts of ocean as they undertake extensive movements across the ocean searching for food, repeatedly crossing national jurisdictional boundaries all their lives. Factors such as low population levels, delayed maturity, low reproductive rates and the long life of these birds can make them highly vulnerable to relatively rapid and permanent changes in their environment.¹¹

4.12 With wingspans of up to 3.5 metres, the Wandering Albatross and the Royal Albatross are the largest flying birds in the world. These birds mate for life, always on the same spot in the same location. They raise one chick per year or so, recuperate for the next year because they cannot moult and feed chicks at the same time, before breeding again. They may live as long as humans.¹²

4.13 Albatrosses are predators and have been assigned to the highest nutritional level in the food web. There is evidence that they are highly dependent for food on the presence of predators in the ocean which disturbed their prey and force it to the surface, where albatrosses can capture it. They are reliant therefore for their continued survival on energy flows from lower nutritional level species. Longevity insured against short term energy deficiencies, but longer term deficiencies will have an impact on population levels. Long term depression of population levels of organisms at lower nutritional levels, such as are said to have occurred with SBT, could have this effect by reducing seriously the energy flow to higher levels of the food web.¹³

4.14 The Southern Oceans Seabird Study Association (SOSSA) saw albatrosses at the top of a complex food web, the structure of which was

¹⁰ *ibid.*

¹¹ Exhibit No 7, p. 5; Submissions, pp. 24-25; Transcript, 23 June 1997, pp. 7, 26.

¹² Exhibit No 7, p. 5; Transcript, 23 June 1997, pp. 29, 31-32, 26.

¹³ Submissions, p. 24; Transcript, 23 June 1997, pp. 21, 22.

increasingly threatened by human activities. They only hold up their declining populations by covering vast areas of ocean in their search for food. SOSSA suggested that historically small populations of species lower in the nutritional levels presented a subtle threat to the declining albatross populations. This threat could not be ignored, particularly as the effects of long-line fishing did not provide an adequate explanation.¹⁴

Albatrosses and humans

4.15 The albatross has had a chequered history of involvement with the human species, and all of its species are threatened by factors of human origin. Supposedly bringing bad weather, it has been the companion of sailors on the high seas far back into history. When all other birds had stopped following a ship, these birds kept in touch, sometimes leaving to search for food but always reappearing. In a sense, these birds became part of crews who regarded them with superstitious fondness. This gave rise to a haunting legend that the bird embodied the soul of a drowning sailor, clinging to its own kind. From this, it was logical to believe that killing an albatross was the worst sort of bad luck. It has been, in any event, one of the few species which generally has been protected from murderous human acts at sea.¹⁵

4.16 There is probably also a fascination about their size and sense of wonder at the sight of such a bird in flight. In English, the attitude to the bird was probably most notably expressed, and the spread of the old superstition reinforced, in the poem by Samuel Taylor Coleridge: *The Rime of the Ancient Mariner*.¹⁶

Albatross population parameters

4.17 Three parameters controlled finely balanced albatross populations:

- breeding success;
- adult survival rates, and

¹⁴ Submissions, p. 25; Transcript, 23 June 1997, p. 21.

¹⁵ Exhibit No 7, p. 5; Submissions, p. 24. *Dictionary of Mythology, Folklore and Symbols*, by Gertrude Jobes, (Scarecrow Press, NY, 1961), Vol 1, p. 62; *How Did It Begin?*, by R Brasch, (Collins, London, 1985), p. 234.

¹⁶ Brasch, *op. cit.*

- the recruitment rate of young birds into breeding colonies.¹⁷

4.18 Thus, a reduction of less than 1 per cent in any of these parameters could send an albatross population into decline. While few were monitored, evidence from breeding colonies showed that both adult survival and rates of recruitment of young birds had been reduced in several colonies, resulting in population declines. Albatrosses were not the type of animals which should be harvested, or taken indiscriminately, and this was effectively what was happening to these birds.¹⁸

Long-line fishing and albatross numbers

4.19 Since the early 1950s, the world's long-line fishing fleets targeting tuna, broadbill and more recently the Patagonian Toothfish had expanded across the world's oceans to the point where it was stated that most albatrosses would interact with long-line vessels at some stage in their lives. This interaction can be fatal for albatrosses: during line setting, the birds scavenge bait attached to hooks on long lines paid out from the vessel's stern before the lines sink below the birds' reach. Once hooked, some are drawn underwater by the sinking line and drown.¹⁹

4.20 The death rate may average only about 0.4 albatrosses per 1000 hooks used, but the number of hooks set yearly was high: between 50 and 100 million in southern oceans alone. Both the number of hooks set and albatross deaths have declined substantially since Mr Nigel Brothers' research. Published in 1991 and based on figures from 1988, it estimated that 44,000 albatrosses per year were killed by Japanese long-line fishing fleets in waters below 30 degrees South.²⁰

¹⁷ Submissions, p. 24.

¹⁸ *ibid.* Transcript, 4 August 1997, p. 45. See paragraph 4.24 below.

¹⁹ Exhibit No 7, p. 5.

²⁰ *ibid.*; see Exhibit No 25 for this research, and paragraphs 4.87 to 4.89 below for more material from Mr Brothers and Dr Gales. Transcripts: 23 June 1997, p. 6; 4 August 1997, p. 60. Exhibit No 20, p. 1.

4.21 For the years 1991 to 1994, the total by-catch of all seabird species by Japanese long-liners in Australian waters was estimated as:²¹

19911217

19922981

19933590

19942817

4.22 These figures were based on the number of birds seen by observers to be hauled on board and probably underestimated total numbers. The 1991 figure was suspect because of concerns about the rigour of the observers' recording of information. The increase from 1992 to 1993 was due to a change of fishing gear by two long-line vessels in 1993, and the decrease from 1993 to 1994 resulted from a reduction in the fishing effort. There was also a decline in 1995 because of a further reduction in the fishing effort in summer, but an increase in 1996 seemed to have resulted from one observed cruise in the south eastern Indian Ocean. For the three years 1992 to 1994, albatrosses were 78 per cent of the total by-catch, with the proportions of individual species varying from year to year.²²

4.23 Within the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), the Australian Antarctic Division had made 'significant efforts' to improve mitigation measures in legal, southern ocean fisheries. In some cases, an 80 per cent reduction in seabird by-catch had been achieved.²³

4.24 Most albatross populations cannot sustain the casualty rates the figures set out above imply. Numbers have been declining at closely monitored sites over recent decades, at from 1 to 7 per cent per year. There had been a 10 to 50 per cent decline in the south Indian Ocean population over the last 16 to 18 years, and there had also been a decline in the closely observed South Georgia

²¹ Exhibit No 10, p. 50 and No 11, p. 3.

²² Exhibit No 10, p. 50, No 11, p. 3, No 16, pp. 1, 3 and No 20, p. 1. The 'fishing year' is from April to March, and seabird catch rates are higher in summer than in winter. Further information on the observer program can be found at paragraphs 4.42 to 4.50 below.

²³ Transcript, 4 August 1997, p. 52.

population in that period. 'Many years of observation' had been needed to provide convincing evidence that the decreases were not part of natural cycles.²⁴

4.25 In Australian waters, over several years, the long-line fishing effort has moved to waters north of 30 degrees South. This was said to be outside the area where albatrosses and other seabirds were generally caught. According to AFMA, the albatross by-catch occurred principally in the southern oceans, between latitudes 30 and 50 degrees South. This covers areas from northern NSW south and south from just above Perth in WA. For the 1997 season, Japanese vessels could only take 200 tonnes of SBT from around Tasmania, a key area for albatrosses. These boats had also been excluded from 35 degrees South off WA, another area of interaction with albatross.²⁵

4.26 Long-line fleets from a number of nations, including Korea as well as Taiwan which were not Parties to the Bonn Convention, fished in southern waters. The Peoples' Republic of China (PRC) was known to be building up to 200 long-line boats, which will probably eventually increase the problems being experienced in these waters.²⁶

4.27 While Taiwan cannot be a member of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), its representatives had discussed mechanisms for cooperative work with that Commission. Taiwan wished to be part of such arrangements: it already abides by some of the CCSBT's conditions, and regarded its international fishing efforts as an opportunity to show itself as a good international citizen.²⁷

4.28 It is believed that illegal long-line fishing for Patagonian Toothfish by foreign vessels in sub-Antarctic waters has had an impact on albatross numbers but it is not clear whether mitigation measures are being used to reduce by-catch, nor can the extent of that by-catch be estimated. While the nations whose vessels were involved can sometimes be identified, it was probably not viable to take any action, especially in such isolated waters. Measures such as painting over registration details, giving incorrect information in response to questions and ignoring radio messages gave some protection to illegal vessels. It was suggested that there was a need for monitoring systems for vessels and for permanent enforcement measures, in which Australia would have to be

²⁴ Exhibit No 7, p. 5; Transcript, 23 June 1997, p. 30.

²⁵ *ibid*, pp. 9, 14-15. For SOSSA's views on this point, see Transcript, 23 June 1997, p. 32, and paragraph 4.73 below.

²⁶ Transcript, 23 June 1997, pp. 7, 33.

²⁷ Transcript, 23 June 1997, pp. 10-11. See paragraph 4.97 below for another view of this matter.

involved, so that range states would be able to implement and uphold amendments to the Convention.²⁸

Research into interactions with albatrosses

4.29 The Marine Research Division of the Commonwealth Scientific Industrial and Research Organisation (CSIRO) has been conducting research into the incidental capture of seabirds on long-lines, including the catch rates and the effect of mitigation measures. A recent research paper pointed out:

- 'a marked reduction' in Japanese long-lining in southern oceans in recent years, so that the 1995 effort was 52 per cent of the 1986 level;
- a marked seasonal contraction in the Japanese fishing effort to the second and third quarters of the year;
- that, since 1980, there had been major contractions and shifts in the Japanese effort to areas off eastern Tasmania away from the east coast of New Zealand's South Island, and reduced effort in the middle of the southern Indian Ocean;
- that the size of the Japanese long-line tuna fleet in relation to other such fleets, especially the Taiwanese, had declined in both absolute and relative terms so that, in 1994, it represented less than 33 per cent of the effort below 30 degrees South; and
- the reported effort by Taiwanese vessels below 30 degrees South had increased rapidly since 1990. If accurate, current rates of effort would be expected to lead to a substantial increase in seabird by-catch, but there was no direct information on such rates for this fleet.²⁹

4.30 The Division had also:

- developed mathematical models to assess the effects on seabird populations of different levels of incidental catch;

²⁸ Submissions, p. 21. Transcripts: 23 June 1997, pp. 23, 35, 36; 4 August 1997, p. 48. See the report in *The Australian*, 10 July 1997, p. 3. Paragraphs 4.66 and 4.67 below also refer.

²⁹ Exhibit No 20, pp. 4, 2, 1.

- carried out international collaborative research, using an archival tag developed jointly with Zelcon Technic, into the Wandering Albatross' foraging habits, and
- participated in development of the TAP, as well as other activities under the CCSBT.³⁰

4.31 The modelling had two aims:

- to establish whether the effects of long-lining could explain some of the population decreases seen over the past 30 years in two well-studied populations, the Wandering Albatrosses from Crozet Island and South Georgia, and
- to project future potential, different catch level efforts and their effects on populations and establish 'sustainable levels' of by-catch.³¹

4.32 Preliminary results indicated that, because the level of fishing activity below 30 degrees South was at the greatest level ever, 'alarm bells should be ringing' about population levels. The modelling also showed that, even in populations with 500 breeding pairs, it only took between 40 and 80 birds to be caught per year from those populations to cause the 'significant decreases' seen in the past. The results of this research could be included in the TAP, due to be finalised by the end of 1997.³²

4.33 The collaborative research was with Japanese scientists who worked in similar areas, such as on seabird catch rates on the high seas, which showed that night setting of lines had 'a significant reduction' in those catch rates. While the impact of night setting on catch rates of SBT was still unclear, it appeared to have a neutral effect or possibly a positive effect.³³

4.34 Archival tags have already been used on SBT because they have depth sensors and can also record light, thus providing estimates of latitude and longitude. Because they could remain on a bird for a number of years, these tags were believed to have a longer-term measuring capability than satellite tracking. With British and French scientists, CSIRO's researchers put tags on Wandering Albatrosses from South Georgia and Crozet Island. Data from the nine tags was still being analysed, but they had the potential to show where birds have been and gain indications of interactions with fishing. This could be

³⁰ Submissions, p. 15; Transcript, 4 August 1997, p. 39.

³¹ Transcript, 4 August 1997, p. 43.

³² *ibid*, pp. 43-44. See paragraphs 4.40 and 4.41 below.

³³ *ibid*, pp. 40, 41.

particularly useful in providing information on juveniles and non-breeders in the years after fledging, about which there was a dearth of information.³⁴

4.35 In June 1997, the Australian Antarctic Division worked with a Japanese tuna boat to obtain information on what happened to bait in the water column, the influence of the condition of the sea and the influence of the ships' turbulence on bait as it sinks. The sea's condition might minimise or negate subtle differences in the bait, depending on how thawed or otherwise it was, and this research sought to determine the best possible and quickest way to get bait to a depth of 20 to 30 metres and out of reach of diving birds. There might also be differences in the ways crews handle unthawed bait which could have an impact on how bait sank, as earlier work had showed that thawed bait sank faster than did unthawed bait. Analysis of the information from this work has not yet been completed.³⁵

4.36 Other research indicated that setting bait at night reduced by-catch by from 92 to 97 per cent. DEST referred to evidence that, if Tori poles were set correctly, by-catch was reduced by 60 per cent. Work was also being done in New Zealand on two underwater setting techniques. In the first, bait was put into a capsule which was then released at a particular depth, while in the second bait was fed from the vessel, down a tube and set under water. It appeared that the capsule concept was being pursued. DEST indicated interest in experimenting with a suite of techniques which might reduce by-catch 'substantially'.³⁶

4.37 As a result of this and other research which will be referred to below, a number of publications have been produced to assist fishing fleets to avoid including seabirds, especially albatrosses, in by-catch. Prepared by such bodies as Wildlife Tasmania and CCAMLR, they included maps, photographs, cartoons, pictures of seabirds and other advice to reduce by-catch. Produced in

³⁴ *ibid*, p. 45. See paragraph 4.76 below.

³⁵ *ibid*, pp. 48-49.

³⁶ Transcript, 23 June 1997, pp. 10, 18-19.

several languages, the central message in such publications was that catching seabirds affected the economics of the fishing business. They also suggested practical ways of reducing seabird by-catch.³⁷

Regional conservation agreements

4.38 The NIA stated that the Convention provided a framework for enhancing the conservation of migratory species, by giving priority to those with an unfavourable status. Under Article IV, agreements which would benefit species through international cooperation were open to all countries: not just to Parties, nor just to range states for the species in question. A significant benefit of these agreements was that they could begin the involvement of non-members in the Convention process. DEST referred to Australia's role and the 'strong support' which had been expressed for its lead in developing such a regional agreement.³⁸

4.39 Such an agreement could include the Valdivian nations, Japan, the USA and any other nation whose vessels use the waters of the Southern Hemisphere. While New Zealand is not a Party to the Convention, there were indications it would join a Southern Hemisphere agreement, which might also include South American nations.³⁹

Threat Abatement Plan

4.40 The key instrument for addressing the threat posed by long-line fishing to albatrosses was the preparation of a draft TAP, which has followed listing of this 'key threatening process' under the *Endangered Species Protection Act 1992* in July 1995. The fishing industry, scientists and non-government conservation groups were being consulted with the aim of ensuring a

³⁷ See, in particular, paragraphs 4.75 to 4.89 below for research by the Albatross Research team at La Trobe University, and Dr Rosemary Gales and Mr Nigel Brothers. Transcripts: 23 June 1997, p. 19; 4 August 1997, p. 52. See Exhibit Nos 14, 26 and 27. See Exhibit No 26, p. 1 and No 27, pp. 8-9. The former, CCAMLR's booklet, is published in English, French, Russian and Spanish, while the latter is in both English and Spanish. See paragraph 4.45 below for use of one booklet in the observer training program.

³⁸ Transcript, 23 June 1997, pp. 5, 12, 17.

³⁹ *ibid*, pp. 5, 20. Following a proposal from Australia, Argentina, Chile, NZ, South Africa, Uruguay and Australia met in the Chilean city of Valdivia on 9-10 March 1995, and established the 'Group of Temperate Southern Hemisphere Countries on Environment', known as the Valdivia Group.

cooperative approach to effective mitigation of the threat from the long-line fishing by-catch. Thus, CSIRO had provided information to DEST to assist in the development of the TAP.⁴⁰

4.41 It was being prepared by a consultant for consideration in August 1997 by the advisory team set up to oversee its development, leading to finalisation of the TAP by the end of 1997. Issues such as coverage by observers and a specialist observer training program were being addressed in this process. The results of the scientific research mentioned above could also be included. Costs for development of the Plan had been allocated from DEST's Endangered Species Program.⁴¹

The observer program

4.42 Observers were permanent staff, employed on an annually renewable contracts through State agencies or AFMA, or temporary staff who were employed on short term contracts to complement immediate requirements for coverage. In addition, agency observers from the Tasmanian Wildlife Service and the Australian Antarctic Division were also placed routinely on vessels, primarily to work on the interaction of seabirds with long-line fishing. This group included seabird biologists who used specialist skills.⁴²

4.43 In 1995, before the tuna fishing season began, a two day briefing was given which included:

- first aid training;
- a general introduction to the season;
- a brief account of each of the projects for which data was required;
- an up-to-date account of the state of SBT stock and the tuna agreements with Japan;
- all aspects of biological data collection;
- the surveillance roles of observers;

⁴⁰ Submissions, pp. 35, 15.

⁴¹ *ibid*, pp. 35-36; Transcripts: 23 June 1997, p. 16; 4 August 1997, pp. 44, 52. See paragraphs 4.29 to 4.37 above for details of some of the research which has been undertaken.

⁴² Exhibit No 22, pp. 1, 35; Exhibit No 13, pp. 1-2.

- an overview of the monitoring and compliance role and general performance criteria expected on vessels, and
- detailed instructions on data collection, forms, compilation and report writing.⁴³

4.44 Observers in the Australian Fishing Zone (AFZ) had a number of duties, including:

- collection of relevant anecdotal information on fleet operations;
- when time permitted, monitoring of line setting operations for seabird activity;
- when on active observation, collection of all dead, landed seabirds; and
- recording any observations of interactions with marine mammals and reptiles.⁴⁴

4.45 They were provided with feedback from data collected from the previous season, basic training in seabird identification and instruction on mitigation strategies such as Tori pole positions, bait thawing procedures and bait throwing. Manuals provided included sections on the seabird issue, basic colour plates to identify birds and instruction about standard data collection procedures. Copies of booklets such as *Catching Fish not Birds: A Guide to Improving your Longline Fishing Efficiency*, by Mr Nigel Brothers and the Wildlife Service, Tasmania, were also provided.⁴⁵

4.46 AFMA believed that an observer's core function was to record the by-catch of seabirds, linked to the level of observed effort. This allowed by-catch rates to be extrapolated against total fleet effort. Observers were instructed to retain dead seabirds for subsequent identification of species, sex, age and other studies.⁴⁶

4.47 A minimum 10 per cent coverage was sought for Japanese vessels fishing for SBT off the east and west coasts of Australia, and 15 per cent was usually achieved. In the 1997 winter season, when only 200 tonnes could be taken, it

⁴³ Exhibit No 22, pp. 35-36.

⁴⁴ *ibid*, p. 1.

⁴⁵ Exhibit No 13, p. 1. See Exhibit No 14. See also paragraph 4.37 above for some detail about the aim and contents of this and other publications designed to reduce seabird by-catch.

⁴⁶ Exhibit No 13, p. 1.

sought 40 to 50 per cent coverage of the Japanese SBT fleet off Tasmania. This represented a substantial reduction in tonnage from past years, so that fewer vessels were fishing and there was a higher level of coverage by observers. The catch rates recorded by observers seemed to indicate that the number of albatrosses being caught had dropped, and this was taken as an indication of the cooperative relationship with the tuna fishing industry.⁴⁷

4.48 One of the major issues for the industry, in terms of cost and impact, was the likely adoption of some form of observer program on domestic vessels. Negotiations had begun with the industry to examine costs, logistics and implementation because it might mean having two observers at a time on board a vessel. It was also possible that the TAP process would make a recommendation on this matter.⁴⁸

4.49 The Tuna Boat Owners' Association of Australia believed that the observers' role was a difficult one, and paid tribute to the degree of professional training which was now provided. It was of the view that the history of observers in Australian waters was a positive one, but that their culture had not moved with the priorities. In particular, the engineering aspects of seabird by-catch should have been understood three to five years ago, as changes over that period could have been anticipated.⁴⁹

4.50 The presence of observers on all vessels within the AFZ was the subject of recommendations from HSI and Greenpeace Australia. In our third report, we recommended that:

a specialist observer training program be introduced with additional emphasis on seabird research, the collection of data on seabird by catch and the effectiveness of seabird bycatch mitigation measures.⁵⁰

Views of interested organisations and individuals

4.51 **Greenpeace.** Greenpeace Australia referred to the observer program for monitoring seabird by-catch on foreign long-line fishing vessels operating in Australian waters, noting that there was no equivalent program for Australian vessels in Australian waters. To enable accurate data to be collected on such

⁴⁷ Transcript, 23 June 1997, pp. 14-15.

⁴⁸ Transcript, 23 June 1997, pp. 12-13, 16.

⁴⁹ Transcript, 4 August 1997, p. 57. See paragraphs 4.90 to 4.98 below for the Association's views on a range of other subjects.

⁵⁰ Transcript, 23 June 1997, p. 7; Submissions, pp. 20 and 22 respectively; third report, *op cit*, Recommendation 18, p. 103.

things as this by-catch, it recommended 24 hour monitoring by multiple observers on all Australian vessels in Australian waters, as well as on the high seas.⁵¹

4.52 While all foreign long-line vessels operating in Australian waters were required to use Tori poles, this was not mandatory for domestic vessels. It was one of the measures to mitigate seabird by-catch which Greenpeace recommended should be mandatory for all domestic vessels.⁵²

4.53 Greenpeace referred to Mr Brothers' 1991 estimate that 44,000 albatrosses were being killed annually by Japanese long-line fleets. While that figure was based on an estimated by-catch rate of 1.3 birds per vessel per day, figures released by the New Zealand Government fisheries observer program for 15 April to 13 May 1997 estimated the rate at 1.13 birds per vessel per day. While Mr Brothers' figures related only to albatrosses and the New Zealand data referred to all seabirds, Greenpeace asserted that these figures showed that current threat abatement strategies for minimising seabird by-catch 'are not proving to be effective'.⁵³

4.54 It had been told that, in New Zealand waters recently, a vessel took 65 birds, 47 of which were albatrosses. It pointed out that this had happened at night when it was understood that Tori poles were being used. For Greenpeace, this situation raised serious questions about the effectiveness of two of the current mitigation methods, and lead to questions about other methods which might be put forward.⁵⁴

4.55 Greenpeace also recommended that:

- areas in the vicinity of albatross colonies should be permanently closed to long-line fishing;
- Australian Government financial support should be provided for research into the effectiveness of new by-catch mitigation measures, such as sub-surface setting technologies; and

⁵¹ Submissions, p. 22.

⁵² *ibid.* From August 1997, new vessels entering the Japanese long-line fleets will be required to use Tori poles; see Transcript, 23 June 1997, p. 33.

⁵³ Submissions, p. 23; Transcript, 23 June 1997, p. 22. See Exhibit No 25 for Mr Brothers' research.

⁵⁴ Transcripts: 23 June 1997, pp. 22-23; 4 August 1997, p. 44.

- all known sites of substantial albatross mortality should be closed to long-line fishing until proven by-catch mitigation measures are thoroughly researched and implemented.⁵⁵

4.56 **AMCS.** The Australian Marine Conservation Society (AMCS) fully supported the listings as 'an extremely important initiative' which could underpin both the global and national measures needed to reverse the increasing impacts on albatrosses, and contribute to the recovery of the listed species.⁵⁶

4.57 It believed that the implementation measures outlined in the NIA would build on the existing work of DEST and AFMA and will not result in excessive additional costs to Australia. Priority must be given to the identification, refinement and implementation of effective strategies to minimise impacts on these species, particularly from long-line fishing. These actions should include development of a global action plan and measures for enforcement on the high seas.⁵⁷

4.58 AMCS also wished to emphasise the importance of Australia continuing to show leadership on this issue, particularly in developing bilateral and multilateral agreements with other nations which are Parties to the Convention.⁵⁸

4.59 **WWF.** WWF also endorsed the listings and commended the formation of the Recovery Team, which was devising the Recovery Plan for the Macquarie Island species. When implemented, the Plan will work with the TAP and will be greatly enhanced by the listing of the Southern Ocean species. The TAP, which would apply to Australia's EEZ, on 'the key threatening process' of long-line fishing was also supported by WWF, as it would enable this country to work with other range states to develop regional conservation plans. These should include measures to reduce/eliminate the effects of threatening processes, such as long-lining. Australia could use the TAP and its results to determine effective strategies to assist in their implementation.⁵⁹

4.60 The mitigation of seabird by-catch was the focus of a meeting of the CCSBT in June 1997. Efforts towards joint activities with Japan and NZ were commended, and implementation of effective mitigation measures to reduce/eliminate by-catch was a Government aim which WWF supported. It

⁵⁵ Submissions, p. 22; Transcript, 23 June 1997, p. 23.

⁵⁶ Submissions, p. 28.

⁵⁷ *ibid.*

⁵⁸ *ibid.*, p. 29.

⁵⁹ *ibid.*, p. 30.

drew attention to the direct links between the national and international efforts of these actions.⁶⁰

4.61 WWF also noted that, because of its leading role in actions to save the Southern Ocean albatross species, it was fitting that Australia should take the lead with amendments to the Convention. Australian scientists, supported by WWF, and working with NZ scientists had used satellite tracking as a tool to provide data on migrations of the Wandering and Royal Albatrosses. Information from this and similar research by scientists from other nations would assist in the formation of regional plans for the conservation of the species.⁶¹

4.62 Through AFMA and international conventions such as CCAMLR and CCSBT, WWF believed Australia could work to strengthen threat-reducing measures, such as the use of observers, predator/prey monitoring, and ecosystem monitoring to assess the effects of fishing. This country therefore should use every diplomatic avenue to advocate membership of these Conventions, as they would be more effective if all fishing nations, especially those which were emerging, were members.⁶²

4.63 **HSI.** HSI supported the move to list the albatross species proposed for listing under the Convention, stating it would facilitate global action to address conservation of the birds. This should be through means such as the universal implementation of a range of mitigation measures in the long-line fishing industry, and not only for foreign fleets operating within the AFZ. To assist research, bird counts and monitoring of vessels should also be compulsory so that, if vessels were in areas they should not be, they could be confiscated, sold and the proceeds used for fisheries enforcement. The presence of independent observers on all vessels within Australia's EEZ would overcome the risk of events being mis-reported.⁶³

4.64 HSI referred to an audit by the ANAO, *Commonwealth Fisheries Management: Australian Fisheries Management Authority*, which had identified the risk of mis-reporting the weight or quantity of fish caught. The ANAO had recommended that AFMA conduct a risk assessment of its systems 'and introduce systems which appropriately counter the areas of risk'. AFMA disagreed with this recommendation, stating that it was working to establish

⁶⁰ *ibid.*

⁶¹ *ibid.*, p. 31.

⁶² *ibid.*

⁶³ Submissions, pp. 17, 20; Transcript, 23 June 1997, pp. 34-35. Many of the mitigation measures were discussed in our third report, *op cit*, at pp. 102-107.

minimum documentation requirements to provide a cost-effective paper trail for quota species and in other key fisheries.⁶⁴

4.65 In its audit, the ANAO was concerned that there was no evidence that AFMA was complying with the requirements of the *Environmental Protection (Impact of Proposals) Act 1974*, administered by the Commonwealth Environmental Protection Agency (EPA). No EIS had been done, nor had there been any referrals to the EPA. As it believed that many of AFMA's fishery planning decisions were environmentally significant, and that a program of environmental impact assessments was required, the ANAO recommended that:

Given AFMA's statutory responsibility for assessing the environmental impact of its decisions, it should:

(a) develop a schedule for the conduct of environmental impact assessments for all its fisheries...⁶⁵

4.66 HSI noted that no such assessments under the Act had been conducted, in spite of calls by NGOs for an EIS for the Macquarie Island, Heard Island and McDonald Islands fisheries because of their potential impact on such endangered species as albatross and cetaceans. It pointed out that recent events had overtaken what it called 'these short-sighted decisions' because of 'an onslaught by illegal fishing fleets' in the sub-Antarctic islands. These fleets used long-lines and were having an impact on albatrosses just as, as was mentioned above, the use of trawl nets in these waters potentially threaten the Spectacled Porpoise.⁶⁶

4.67 HSI asserted that there was a potential for 'fish wars' in sub-Antarctic waters because other fishing grounds had been fished out. It saw that there would be a need for urgent and ongoing funding for 'a permanent enforcement presence' there. This would be necessary, it argued, if range states including

⁶⁴ Australian National Audit Office: *Commonwealth Fisheries Management: Australian Fisheries Management Authority*, Performance Audit, Audit Report No 32, 1995-96: Vol 1, p. 24; Vol 2, Recommendation No 28, pp. 110-112. See paragraph 1.19 above for a reference to this report.

⁶⁵ *ibid*, Vol 2, p.48; Vol 1, p 5.

⁶⁶ Submissions, p. 21. See paragraph 4.28 above for a reference to illegal fishing.

Australia were to be able to uphold and implement listings under the Convention and deal with the impact of fishing on albatrosses, small cetaceans and other species in those waters.⁶⁷

4.68 As Australia was committed to a program of Marine Protected Areas, HSI believed that the sub-Antarctic islands should be included in the highly protected category: no fishing, especially as some of the terrestrial areas had been nominated for World Heritage status. It also suggested that evidence of following 'best practice' by fishing fleets should be used as a means of gaining access to Australian fishing grounds.⁶⁸

4.69 Finally, HSI believed that DEST, as the proponents of the nominations under the Convention and the acknowledged leader in research in this field, should coordinate range states in implementing measures necessary to ensure the long-term survival of these species. This would require some 'fairly small scale funding'.⁶⁹

4.70 **SOSSA.** SOSSA was founded in 1994 and is an umbrella organisation for study groups with an interest in the biodiversity of the Southern Ocean. Its submission provided some of the material quoted above on the characteristics of albatrosses. It stated that nine of the albatross species proposed for listing in Appendix II occurred regularly in Australian waters, some in reasonable numbers.⁷⁰

4.71 It drew attention to changes in animal populations at the upper levels of the food web, involving large predatory fish and albatrosses, and linked this with long-term decreases in the energy flow in the marine environment. This, it believed, was caused by the removal of the large predatory animals from the ocean. It pointed out that the argument in favour of long-line fishing is: if the by-catch can be removed, it is a clean method which targets particular species and does little other damage.⁷¹

4.72 SOSSA favoured the ending of long-line fishing. It did not believe that mitigation measures had had a great effect on the long-line albatross by-catch if only because if the amount of bait going into the water increased, there was more bait for which albatrosses could forage. Obviously, where the fishing was

⁶⁷ Submissions, p. 21; Transcript, 23 June 1997, p. 35.

⁶⁸ Submissions, pp. 21, 20; Transcript, 23 June 1997, p. 36.

⁶⁹ Submissions, p. 17; Transcript, 23 June 1997, p. 34.

⁷⁰ Submissions, p. 24. See paragraphs 4.11 to 4.14 above for use of SOSSA's material on the characteristics of albatrosses.

⁷¹ Transcript, 23 June 1997, p. 22. See paragraph 4.89 below.

most intense, the larger fish forced prey to the surface which attracted albatrosses.⁷²

4.73 It drew attention to the impact of intensive long-line fishing above 30 degrees South, east of Stradbroke Island and inside the Great Barrier Reef. There was evidence that foraging Shy Albatrosses and Light-mantled Sooty Albatrosses had been taken as by-catch in those waters. This varied AFMA's picture of long-line fishing in Australian waters.⁷³

4.74 SOSSA also noted that the available evidence indicated that there was a connection between breeding success and the amount of food within range of breeding areas. Normally, breeding success was high. While numbers of adult Wandering Albatrosses on South Georgia and Crozet Island had suffered heavily from long-lining, the overall population on Crozet Island appeared to have stabilised because of successful breeding. It suggested that the combination of the effects on populations of long-line fishing and reduced breeding success indicated when food, and forage from fishing, within range of breeding islands had vanished.⁷⁴

4.75 **Mr David Nicholls.** Mr Nicholls is a researcher with Albatross Research, La Trobe University. Since 1992, this group has tracked Wandering Albatrosses and other species of large albatrosses by satellite over three-quarters of the southern oceans. It studied adult birds migrating and dispersing and has followed individual flights of up to 75,000 kilometres in a year. These flights were made in the birds' non-breeding year, and concentrated on breeding adults who remained relatively close, in a radius of 2000 to 3000 kilometres, to their breeding islands. Studies in which Mr Nicholls had been involved did not address juvenile and pre-breeding birds.⁷⁵

4.76 While there were many species and populations of albatross in different places, he said the general picture was clear. Some species may be stabilising but overall albatross populations were declining and, in particular, all the

⁷² *ibid*, pp. 27-28. See paragraph 4.89 below.

⁷³ *ibid*, p. 32. See paragraph 4.25 above for AFMA's views, and Exhibit No 18, p. 2, which refers to 'the low bycatch rates observed on Japanese long-liners in northern Australian waters'.

⁷⁴ *ibid*, pp. 26-27.

⁷⁵ Submissions, pp. 1, 5; Transcript, 23 June 1997, p. 29.

juveniles who would be the next generation of breeding adults were missing. He specifically referred to the decline of the South Georgia and southern Indian Ocean populations over the past two decades.⁷⁶

4.77 Satellite tracking observations since 1992 had identified the range states and countries for a number of albatross species which only had legal protection in the Australian, New Zealand and French EEZs. Although it had made progress in outlining techniques for protecting albatrosses, CCAMLR did not extend over the area where these birds spend most of their time, hence the importance of the Convention. The authority of CCAMLR was, in any case, being challenged by illegal fishing in sub-Antarctic waters.⁷⁷

4.78 In cooperation with AFMA and NSW Fisheries, the La Trobe group had begun systematically investigating the birds' distribution in relation to known fisheries. Mr Nicholls spoke to a map which showed that from 30 to 50 degrees South included the food-rich areas of the sea which attracted albatrosses. Those which breed east of New Zealand visit Australian waters and fly to South America over seven days, flying over 1000 kilometres per day. They spend four to six months in the area around Crozet Island, off the Patagonian shelf, before flying back to Australian/New Zealand waters, and then fly into headwinds to return to their breeding area on Crozet Island.⁷⁸

4.79 Because birds move rapidly between fisheries, a close relationship can be detected and the data was of great concern: Wandering Albatrosses spend a lot of time in Australian and other waters where there had been and continued to be heavy SBT and other fishing efforts. Birds fly widely in the Tasman Sea and in winter off the NSW coast, both major tuna fishing areas, and extensively in the New Zealand EEZ, another major tuna fishing area. Indian Ocean birds fly over the main fishing grounds west of Perth. Birds flying to the coast of South America cross an area which has one of the highest by-catch rates from a type of long-lining other than for tuna.⁷⁹

4.80 Even though hooks for long-line fishing were being better set, and this seemed to be reducing the impact of fishing on some albatross species, it was still the fishing method which was so insidiously damaging to populations of these birds. They persistently searched fishing areas and had no refuge so that,

⁷⁶ Transcript, 23 June 1997, p. 30. See paragraph 4.24 above.

⁷⁷ Submissions, pp. 13, 5; Transcript, 23 June 1997, p. 24. See paragraph 4.28 above.

⁷⁸ Submissions, p. 3; Transcript, 23 June 1997, p. 25.

⁷⁹ Submissions, pp. 3-4. This includes a reference to research published in 1995 by Mr Brothers.

no matter which areas might be closed or moved, fisheries and the birds would come together. Thus, Mr Nicholls said, mitigation measures had to succeed.⁸⁰

4.81 The La Trobe group's research provided 'incontestable proof' that albatrosses need urgent conservation assistance which the Bonn Convention could provide, and that the proposed listings were essential. Australia should support actions which would ensure conservation of these species and, in its EEZ, the best mitigation measures should be mandatory. He gave as an example the fact that, where Australia puts observers on 10 per cent of vessels, other nations put them on 'five and nine times that number'. Australia had much to be proud of, but there were areas where there could still be improvements. These could include the extension of funded monitoring of seabird by-catch by specialist observers on all vessels, together with prompt analysis and publication of the resulting data.⁸¹

4.82 Because juveniles suffered high mortality rates and were now largely missing from NSW waters, Mr Nicholls recommended that more detailed studies be undertaken into the foraging habits of birds before they started breeding, to about ten years of age. New technology had provided tools to monitor this stage of life, a step needed to achieve ecologically sustainable management which, he said, was a requirement under AFMA's legislation.⁸²

4.83 Mr Nicholls' other recommendations were that:

- funding of the development and commercialisation of the new marine technology should be supported;
- as by-catch included other species, continued monitoring was needed to ensure that reducing albatross by-catch benefited those other species, and the fishing industry, and
- adequate funding was provided for ecologically sustainable management of fisheries, based on scientific knowledge.⁸³

4.84 He said that the consequences of this Convention were more than simply listing species because listing would enable the establishment of conservation agreements between the relevant range states, under Article 4. While Australia had taken a leading role in albatross conservation, it needed to follow this through with such agreements. There was also a need to put pressure on non-

⁸⁰ Submissions, p. 4; Transcript, 23 June 1997, pp. 33, 24.

⁸¹ Submissions, pp. 5-6; Transcript, 23 June 1997, p. 35.

⁸² Submissions, p. 6.

⁸³ *ibid.*

members to join the Convention, especially if their fleets were fishing illegally. He also suggested that more attention needed to be devoted to research on by-catch because, while there were costs, there were also benefits in reducing it: to albatrosses, to the ecology and to the fishing industry.⁸⁴

4.85 Mr Nicholls mentioned difficulties in obtaining funds for La Trobe's research, noting that the cost of satellite tracking a bird for six months was \$10,000. Research undertaken over the past four years had shown that the tracking techniques worked and that the information which had been produced was relevant. These techniques should now be applied systematically to other species of albatross, particularly the juveniles.⁸⁵

4.86 Finally, Mr Nicholls referred to the TAP, the recovery plan and the intention to introduce 'best practice' into the Australian EEZ, commenting that he did not see the present situation as an inclusive process. He suggested that, if plans, discussions and research were available on the Internet, conservation of albatrosses could become more inclusive because those interested in the subject would have greater access to the available material.⁸⁶

4.87 **Dr Rosemary Gales and Mr Nigel Brothers.** A considerable amount of the work, on the monitoring of seabird populations and their interactions with fisheries, undertaken by these researchers over the past decade 'contributed substantially' to the preparation of these amendments to the Convention. They looked at the by-catch issue by studying albatrosses on land, and by working with the fishing industry at sea. In this context, they had been involved in the development of mitigation measures to solve the by-catch problem.⁸⁷

4.88 While these listings were warranted and were a necessary part of addressing global conservation issues, Dr Gales and Mr Brothers believed it was important to ensure that such listings strengthened and accelerated finding solutions to problems experienced by albatrosses. Provided 'the correct moves' were made, both the continued economic viability of long-line fishing and the conservation status of albatrosses and other seabirds could be secured. Listings under the Convention were among these moves which would serve to highlight

⁸⁴ Transcript, 23 June 1997, pp. 25-26, 36. See paragraph 4.28 above for a reference to illegal fishing, and to paragraphs 4.38 and 4.39 for regional conservation agreements.

⁸⁵ *ibid*, pp. 31, 28. Greenpeace Australia also referred to difficulties in obtaining funding for research projects.

⁸⁶ *ibid*, p. 34.

⁸⁷ Submissions, p. 48; Transcript, 4 August 1997, pp. 60, 61. The following Exhibits accepted for this inquiry are, or include, the work of these researchers: Nos 7, 8, 14, 25 and 27. This is not an exhaustive list of their publications on fisheries and the conservation of albatrosses. Mr Brothers' 1991 research, referred to in paragraphs 4.20 and 4.53 above, appears to have been crucial in drawing attention to the plight of the albatross.

the problems and provided another avenue for Australia's international negotiations on them. Another of these moves was to seek solutions which were acceptable and workable.⁸⁸

4.89 Mr Brothers suggested that using hooks was probably the least destructive way of catching fish, and that getting rid of the by-catch was part of the business of making fishing with hooks as clean as possible. He confirmed that food around fishing boats attracted birds, but that they did not learn quickly enough about the hazards which accompanied the food.⁸⁹

4.90 **Tuna Boat Owners' Association of Australia.** This Association supported the listing of albatrosses under the Bonn Convention. It represented virtually all the Australian SBT industry, and many members were substantial fishers of other tuna in Australian waters. Long-lining for SBT below Sydney in NSW and in Tasmanian waters had the potential for interaction with seabirds. In Australian waters, the SBT quota for long-lining was 300 tonnes in 1996 and the one, large freezer operation caught about 150 tonnes per year. The balance of the quota was caught by small boats which used only about 1000 hooks with 'short-time hauls', where larger vessels used about 3000 hooks and had much longer hauls.⁹⁰

4.91 About 90 per cent of Australian SBT quota went to farms or was caught by poles. Of the other tuna species caught in Australian waters, only a 'small proportion' was caught in areas where there were albatrosses. Thus, while the Association stated its members had 'minimal' impact on seabirds, it accepted representational responsibility on the issue because:

- more of the Australian quota would be used for long-lining which had a low impact on, and was a high value-added way of, catching fish such as tuna and billfish;
- the Australian industry had a close relationship with the Japanese industry through:
 - long-lining joint ventures,
 - the latter's strong support for the development of tuna farming in this country,
 - the need for cooperation in marketing, and

⁸⁸ Submissions, p. 48; Transcript, 4 August 1997, p. 61.

⁸⁹ Transcript, 4 August 1997, p. 63.

⁹⁰ *ibid*, pp. 49-50.

- membership of the CCSBT;
- of deep concerns about by-catch, as well as the taint it gave the industry including its canning operation, and
- the Association was a strong supporter of the Seafood Industry Council, which was addressing the by-catch issue.⁹¹

4.92 It accepted that the industry had to deal with the problem of by-catch, because tuna fishing was now under threat as much as albatrosses. Through its membership of bodies such as the TAP Working Party, the Macquarie Island Recovery Plan for the Wandering Albatross and the CCSBT Ecologically Related Species (ERS) Committee, the Association spent a large amount of time talking to researchers and foreign operators on this issue.⁹²

4.93 The Association believed that actions by the International Union for Conservation of Nature (IUCN) and listing under the Bonn Convention were not quick enough. It did have concerns about the diffusion of effort through a profusion of bodies, noting that the United Nations' (UN) Food and Agricultural Organisation (FAO) was seeking involvement in by-catch and TAP issues. Although a framework under various international conventions was in place, the biggest difficulties in achieving 'the right outcomes' were:

- the increasing influence of Taiwanese and Korean fleets in southern waters, and
- the critical role of facilitators who should not only be specialist observers on Japanese boats but liaison people with Taiwanese and Korean fleets.⁹³

4.94 The combined Taiwanese/Korean SBT catch in 1996 was about 3000 tonnes, about half that of Japan, and this non-CCSBT catch was expanding sharply. The Association believed that the real influence on seabird by-catch in the next decade would be by the non-CCSBT countries, and countries such as Taiwan and Korea who were not members of the Bonn Convention. It asserted that the only thing which would make nations such as Taiwan, Korea or Indonesia join CCSBT, or to accept restrictions on catches, would be the closure of the Japanese market to the non-CCSBT catch. It recommended, and intended to start, a campaign to get the Australian Government:

⁹¹ Transcript, 4 August 1997, p. 53; Submissions, p. 50.

⁹² Transcript, 4 August 1997, p. 53, 54, 58; Submissions, p. 50.

⁹³ Transcript, 4 August 1997, pp. 53, 54; Submissions, p. 51. See paragraph 4.49 above for the Association's views on aspects of the observer program.

- to influence the Japanese Government to ban SBT imports from non-CCSBT countries, or to restrict imports to agreed levels, and
- to close the Australian and New Zealand markets to imports from non-CCSBT countries.⁹⁴

4.95 The Association summarised its views by stating that all bodies and individuals with an interest needed to focus on the problem, secure resources, use the existing framework and follow up by using facilitators. The problems could then be resolved by:

- engineering, by having both a short term agenda using the existing technology (eg. Tori poles, bait throwers, thawing racks, water cannon), and a longer term agenda (eg. underwater setting from decks and then under decks), and
- education, by extending the techniques of Australian, Japanese and New Zealand fleets to non-CCSBT fleets such as Taiwan, Korea and (potentially) the PRC in such areas as the proper rigging of Tori poles and the proper launch pattern for bait throwers.⁹⁵

4.96 It believed that only Japan could, to some extent, have an impact on Taiwan and Korea because a range of their vessels had Japanese fishing masters. Individuals such as Mr Brothers also had some status. The Association believed Japan's presence in the southern oceans should be maintained so Australia could have some influence on that country and, hopefully, through it on Taiwan and Korea. The question of influencing Japan was crucial: its vessels had access to the AFZ, whereas some long-lining countries did not. The amount of influence Australia might have on the Japanese Government was another matter altogether.⁹⁶

4.97 While it would like to see non-CCSBT countries as members of the Bonn Convention, the Association could see why they would not want to join. Their catch had grown from 2000 tonnes three years ago to 4000 tonnes in 1996 and, should some join the Convention, other fleets would re-flag themselves. Contrary to other views expressed during the inquiry, the Association believed that, while it had made informal commitments to CCSBT about tonnages, Taiwan had no intention of keeping to them.⁹⁷

⁹⁴ Transcript, 4 August 1997, pp. 53-54, 57; Submissions, pp. 51-52.

⁹⁵ Submissions, pp. 50-51.

⁹⁶ Transcript, 4 August 1997, pp. 54, 55, 56.

⁹⁷ *ibid*, pp. 55, 57. See paragraph 4.27 above.

4.98 Finally, the Association referred to a proposal it had made to the Australian Government to use spare quota to experiment with night setting of baits with observers on board. According to this body, neither the Australian nor New Zealand Governments were prepared to vary their respective rules. It believed that, provided they were rationally based, it would accept changes to Australia's CCSBT quota, but sometimes it had difficulty in seeing what were the Government's priorities.⁹⁸

⁹⁸ Transcript, 4 August 1997, p. 59.

APPENDIX 1

LIST OF SUBMISSIONS

1. Mr D Nicholls
2. CSIRO (Division of Marine Research)
2A.
3. Humane Society International Inc
3A.
4. Greenpeace Australia
5. Southern Oceans Seabird Study Association
6. Department of Primary Industries and Energy/Australian Fisheries
Management Authority
7. Australian Marine Conservation Society Inc
8. World Wide Fund for Nature Australia
8A.
9. Department of Environment, Sport and Territories
10. Dr Rosemary Gales and Mr Nigel Brothers
11. Tuna Boat Owners' Association of Australia Inc

APPENDIX 2

WITNESSES AT PUBLIC HEARINGS

Canberra, 23 June 1997

Department of the Environment, Sport and Territories (Biodiversity Group, Environment Australia)

Mr B Baker, Assistant Director, Wildlife Management Section

Mr C Griffiths, Director of National Parks and Wildlife

Mr T Scotney, Project Officer, Wildlife Management Section

Ms D Thiele, Project Officer, Marine Wildlife

Department of Primary Industries and Energy

Mr P Cassells, Assistant Director, Fisheries and Aquaculture Branch

Mr N Hermes, Acting Director, International Relations, Fisheries and Aquaculture Branch

Australian Fisheries Management Authority

Dr N Rayns, Senior Fisheries Management, Tuna and Billfish

Ms Karen Weaver, Manager, Environment Section

Southern Oceans Seabird Study Association

Mr Henry Battam, Assistant Secretary

Mr L Smith, Vice-President

Humane Society International

Mr B Foster, Executive Officer

Greenpeace Australia

Mr D Gladman

Private Citizen

Mr D Nicholls

Hobart, 4 August 1997

Commonwealth Scientific and Industrial Research Organisation

Dr B Hill, Acting Program Manager, Resources, Division of Marine Research

Dr G Tuck, Fisheries Scientist/Resource Modeller, Division of Marine Research

Department of the Environment, Sport and Territories

Mr B Barrington, Assistant Director, Wildlife Management Section,
Biodiversity Group, Environment Australia

Mr I Hay, Senior Policy Officer, Australian Antarctic Division

Mr A Jackson, Acting Assistant Director, Policy and Planning, Australian
Antarctic Division

Dr G Robertson, Senior Research Scientist, Australian Antarctic Division

Tuna Boat Owners' Association of Australia

Mr B Jeffriess, President

Department of Environment and Land Management, Tasmania

Mr N Brothers, Wildlife Management, Parks and Wildlife Service

Dr R Gales, Project Officer, Parks and Wildlife Service.

APPENDIX 3

LIST OF EXHIBITS

1. 'Satellite Tracking of a Wandering Albatross from the Antipodes Islands, New Zealand, to South America', by D G Nicholls, M D Murray, G P Elliott and K J Walker in *Corella*, 1996, 20(1), p. 28.
2. 'Satellite Tracking of the Wandering Albatross *Diomedea exulans* around Australia and in the Indian Ocean', by David Nicholls, Durno Murray, Harry Battam, Graham Robertson, Philip Moors, Eric Butcher and Michael Hilderbrandt in *EMU*, Vol 95, 1995, pp. 223-230.
3. 'Satellite Tracking of Wandering Albatross (*Diomedea exulans*) from the Auckland Islands: Preliminary Results', by Kath Walker, Graeme Elliott, David Nicholls, Durno Murray and Peter Dilks in *Notornis*, 42, 1995, pp. 127-137.
4. *Incidental Seabird Mortality in the Southern Bluefin Tuna Fishery: Some Issues for the Ecologically Related Species Working Group of CCSBT*, by Dr Alan D Hemmings (provided by Greenpeace Australia).
5. Greenpeace Australia News Release, dated 10 June 1997: *Seabird Slaughter Continues, Claims Greenpeace* (provided by the Australian Marine Conservation Society Inc).
6. Copy of Resolution 1.15 (*Incidental Mortality of Seabirds in Longline Fisheries*), passed at the World Conservation Congress of the IUCN in October 1996 (provided by the Australian Marine Conservation Society Inc).
7. *The Incidental Mortality of Albatrosses in Longline Fisheries: A Report on the Workshop from the First International Conference on the Biology and Conservation of Albatrosses, Hobart, Australia, September 1996*, by Karen Alexander, Graham Robertson and Nigel Brothers (Commonwealth of Australia, 1997).
8. 'Recommendations for Bonn Convention', Chapter 4 from *Co-operative Mechanisms for the Conservation of Albatross*, by Rosemary Gales (Australian Nature Conservation Agency).

9. *Investing in Our Heritage: The Commonwealth's Environment Expenditure 1997-98* - Statement by Senator the Hon Robert Hill, Minister for the Environment, 13 May 1997.
10. 'By-catch of Albatrosses and other Seabirds by Japanese longline Fishing Vessels in the Australian Fishing Zone from April 1992 to March 1995', by Neil Klaer and Tom Polacheck in *EMU*, Vol 97, 1997, pp. 150-167.
11. *Japanese Longline Seabird Bycatch in the Australian Fishing Zone April 1991-March 1994*, by N Klaer and T Polacheck, CSIRO Division of Fisheries, October 1995.
12. *The Action Plan for Australian Cetaceans*, by J L Bannister, C M Kemper and R M Warneke, Wildlife Australia, Endangered Species Program, Project Number 380, Australian Nature Conservation Agency, September 1996.
13. AFMA Memo dated 8 July 1997: Strategies and Training for AFZ observers in regard to seabird bycatch and mitigation measures.
14. *Catching Fish not Birds: A Guide to Improving Your Longline Fishing Efficiency*, by Nigel Brothers and Wildlife Service, Tasmania.
15. *A Modelling Framework for Assessing the Impact of Fishery By-Catches on Albatross Populations*, by G Tuck and T Polacheck (Document prepared by CSIRO for the First Meeting of the CCSBT Ecologically Related Species Group, 18-20 December 1995, Wellington, NZ).
16. *Japanese Longline Seabird Bycatch in the Australian Fishing Zone April 1995-March 1997*, by N Klaer and T Polacheck (Document prepared by CSIRO for the Second Meeting of the CCSBT Ecologically Related Species Group, 3-5 June 1997, Canberra).
17. *The Influence of Environmental Factors and Mitigation Measures on By-Catch Rates of Seabirds by Japanese Longline Fishing Vessels in the Australian Region*, by N Klaer and T Polacheck (Document prepared by CSIRO for the Second Meeting of the CCSBT Ecologically Related Species Group, 3-5 June 1997, Canberra).
18. *Some Observations on Seabird Bycatch from Australian Longline Fishing Vessels: 1994-1996*, by Wade Whitelaw (Document prepared by CSIRO for the Second Meeting of the CCSBT Ecologically Related Species Group, 3-5 June 1997, Canberra).

19. *Recent Information Related to Seabird Bycatch on the High Seas*, by G Tuck, A Betlehem and T Polacheck, (Document prepared by CSIRO for the Second Meeting of the CCSBT Ecologically Related Species Group, 3-5 June 1997, Canberra).
20. *Trends in Tuna Longline Fisheries in the Southern Oceans and Implications for Seabird Bycatch: 1997 Update*, by G Tuck and T Polacheck (Document prepared by CSIRO for the Second Meeting of the CCSBT Ecologically Related Species Group, 3-5 June 1997, Canberra).
21. *Some preliminary results from an albatross archival tagging pilot study*, by G Tuck, T Polacheck, H Weimerskirch, J Croxall and S Wotherspoon (draft CSIRO paper).
22. *AFZ Observer Program: Summary of the 1995 Japanese Southern Bluefin Tuna Winter Fishing Season*, Australian Fisheries Management Authority, January 1996.
23. Memo from SA Department of Primary Industries, dated 24 June 1997, re listing of cetaceans.
24. Memo from Austral Fisheries Pty Ltd, dated 3 July 1997, re listing of cetaceans.
25. 'Albatross Mortality and Associated Bait Loss in the Japanese Longline Fishery in the Southern Ocean', by Nigel Brothers in *Biological Conservation*, 55, 1991, pp. 255-268.
26. *Fish the Sea not the Sky: How to avoid By-catch of Seabirds when Fishing with Bottom Longlines*, Commission for the Conservation of Antarctic Marine Living Resources (English version).
27. *Longline Fishing Dollars and Sense: Catching Fish not Birds using Bottom Set or Mid Water Set Longlines*, by Nigel Brothers (Spanish interpretation: *Pesca de Palangreros los Dolares y El Sentido Comun: Capturando Peces en Vez de Aves Marinas Usando Palangreros de Profundidad*, by Dawn Hoy).